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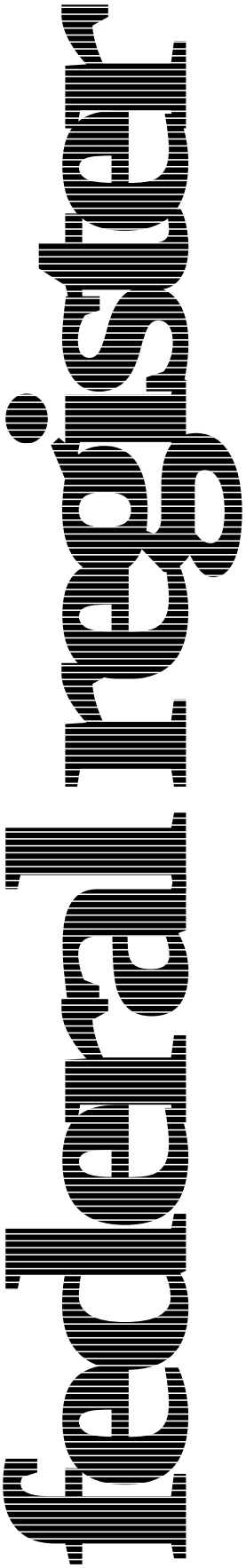

Friday
July 21, 1995

Briefings on How To Use the Federal Register
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 12 at 9:00 am

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

RESERVATIONS: 202–523–4538

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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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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

5 CFR Chapter XXXIII

22 CFR Part 705

RINs 3209–AA00, 3209–AA04, 3209–AA15, and 3209–AA16

Supplemental Standards for Ethical Conduct for Employees of the Overseas Private Investment Corporation

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Final rule.

SUMMARY: The Overseas Private Investment Corporation (OPIC), with the concurrence of the Office of Government Ethics (OGE), is issuing a regulation for employees of OPIC that supplements the executive branch-wide Standards of Ethical Conduct issued by OGE. OPIC is also repealing its existing agency standards of conduct regulations that are now superseded by the branch-wide Standards of Ethical Conduct and by the executive branch financial disclosure regulation also issued by OGE. In place of the regulations, OPIC is substituting a cross-reference to the new branch-wide regulations and this supplemental regulation.

EFFECTIVE DATE: July 21, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Offutt, (202) 336–8414.

SUPPLEMENTARY INFORMATION:

I. Analysis of Regulation

On August 7, 1992, the OGE published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) for codification at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557 (October 27, 1992) and 57 FR 52583 (November 4, 1992). The Standards, effective February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive agencies to publish agency-specific supplemental regulations that are necessary to properly implement their respective ethics programs. OPIC and OGE have determined that the following interim supplemental rule is necessary for successful implementation of OPIC's ethics program, in light of OPIC's operations.

5 CFR 2635.105 and 2635.803 authorize individual agencies, by supplemental regulation, to require employees to obtain approval before engaging in outside employment activities. This final rule, for codification at 5 CFR 4301.101, requires any employee of OPIC who wants to engage in outside employment to obtain prior approval of such activity from OPIC's Designated Agency Ethics Official.

OPIC is also repealing its existing standards of conduct regulations at 22 CFR part 705 which, except for the sections noted immediately below, were superseded by the executive branch-wide Standards on February 3, 1993. Sections 705.735–104, 705.735–109 and part of 705.734–110 of OPIC's standards, dealing with financial disclosure, were superseded on October 5, 1992 by OGE's executive branch-wide financial disclosure regulation codified at 5 CFR part 2634. See 57 FR 11800–11830 (April 7, 1992), as amended at 57 FR 21854–21855 (May 22, 1992) and 57 FR 62605 (December 31, 1992). In place of its old standards at 22 CFR part 705, OPIC is issuing a residual cross-reference provision at new 22 CFR 705.101 to refer to both the branch-wide Standards and financial disclosure regulations and to OPIC's new supplemental regulation.

II. Matters of Regulatory Procedure

Administrative Procedure Act

The Deputy General Counsel of OPIC found good cause pursuant to 5 U.S.C. 553(b) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to the interim rules and repeal. The reason for this determination was that it was important to smooth transition from OPIC's prior ethics rules to the new executive branch-wide Standards and financial disclosure regulations that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to OPIC organization, procedure and practice. Nonetheless, the interim rulemaking was published in 58 FR 33319 (June 17, 1993), and had provision for a 45-day public comment period. No comments were received on the interim rulemaking.

Executive Order 12866

In promulgating these final regulations, the Overseas Private Investment Corporation has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These regulations have not been approved by the Office of Management and Budget under the Executive Order, as they deal with agency organizational, management, and personnel matters and are not, in any event, deemed ''significant'' thereunder.

Regulatory Flexibility Act

The Deputy General Counsel of OPIC determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business because it affects only OPIC employees.

Paperwork Reduction Act

The Deputy General Counsel of OPIC determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Executive Agency Ethics Programs

The Director of the Office of Government Ethics approved this interim rule, for the reasons set forth in the preamble, on March 18, 1993. No changes were made to the interim rule to make it the final rule.

List of Subjects in 5 CFR Part 4301 and 22 CFR Part 705

Conflict of interests, Government employees.

For the reasons set out the preamble, the interim rules published in the

Federal Register issue of June 17, 1993 (58 FR 33320) adding 5 CFR chapter XXXIII and revising 22 CFR part 709 are adopted as final without change.

Authority: 5 U.S.C. 7301.

Dated: July 14, 1995.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs, Overseas Private Investment Corporation.

Dated: July 14, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 95–17844 Filed 7–20–95; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Part 273

[Amendment No. 351]

Food Stamp Program; Distribution of Employment and Training Performance-Based Funds

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Food and Consumer Service is correcting a typographical error in the regulatory text to the final rule published on January 5, 1995 (60 FR 1708) entitled Food Stamp Program: Distribution of Employment and Training Performance-Based Funds. This action is necessary to ensure proper codification of the provisions of the January 5, 1995 rulemaking.

EFFECTIVE DATE: July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Ellen Henigan, Supervisor, Work Program Section, Program Design Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. The telephone number is (703) 305–2762.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** published on January 5, 1995, at 60 FR 1708 (column 3), amendatory instruction No. 3 under Part 273 calls for a revision to paragraph (d)(1)(i)(B) of 7 CFR 273.7. The reference to paragraph (d)(1)(i)(B) should have read ''(d)(1)(i)(C)''. Paragraph (d)(1)(i)(B) was redesignated by an earlier rulemaking as paragraph (d)(1)(i)(C). (See, 57 FR 60082, December 12, 1992). Therefore, the Department is amending Amendatory Instruction No. 3 to make the necessary correction to the reference.

Correction of Publication

Accordingly, the publication on January 5, 1995, is corrected as follows:

§ 273.7 [Corrected]

1. On page 1708, third column, under Part 273, in amendatory statement no. 3, the reference to paragraph ''(d)(1)(i)(B)'' is corrected to read ''(d)(1)(i)(C)''.

2. On page 1708, third column, in § 273.7, paragraph (d)(1)(i)(B) is correctly designated as paragraph (d)(1)(i)(C).

Dated: July 11, 1995.

William E. Ludwig,

Administrator, Food and Consumer Services.

[FR Doc. 95–17943 Filed 7–20–95; 8:45 am]

BILLING CODE 3410–30–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AD36

Import and Export of Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to establish specific licensing requirements for the import and export of radioactive waste and to clarify the requirements for the import and export of incidental radioactive material coming into or leaving the United States. The amendments conform the policies of the United States to the guidelines of the International Atomic Energy Agency (IAEA) Code of Practice on the International Transboundary Movement of Radioactive Waste. These amendments strengthen the Commission's control over radioactive waste entering and leaving the United States.

EFFECTIVE DATE: August 21, 1995.

ADDRESSES: Copies of comments received are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ronald Hauber, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–2344.

SUPPLEMENTARY INFORMATION:

I. Objective and Background

Radioactive waste is generated from the nuclear fuel cycle during the normal operation of nuclear power plants, fuel fabrication plants, enrichment facilities, uranium mining and milling facilities; the decommissioning and close out of nuclear facilities (environmental restoration); and the use of radioactive materials in medicine, industrial applications, research, and education. The nuclear fuel cycle is by far the largest source of radioactive waste, with low-level radioactive waste (LLW) currently accounting for the largest proportion of waste by volume. The importance of protecting human health and the environment in radioactive waste management and disposal has long been recognized by the NRC. This rule helps ensure the safe management and disposal of radioactive waste by amending the NRC's regulations in 10 CFR Part 110 with respect to radioactive waste entering or leaving the jurisdiction or control of the United States. The amendment also clarifies the requirements applicable to shipments of incidental radioactive material.

This final rule is intended to reflect the principles of the International Atomic Energy Agency (IAEA) Code of Practice on the International Transboundary Movement of Radioactive Waste (Code). The Code was approved in September 1990, with strong U.S. Government support. The Code resulted from an international effort within the IAEA to address concerns about possible improper transfer and disposal of radioactive waste. A set of principles was established to guide countries in the development and harmonization of policies and laws on transboundary movements of radioactive waste to ensure its safe management and disposal. A basic principle of the Code is that international movements of radioactive waste should take place with the prior notification and consent of the sending, receiving, and transit countries. The Code also provides that no receiving country should permit the receipt of radioactive waste for management or disposal unless it has the administrative and technical capacity and regulatory structure to manage and dispose of the waste in a manner consistent with international safety standards. Before the issuance of this final rule, NRC's regulations were not consistent with the principles

embodied in the Code, especially with regard to possible transfers of LLW. (The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal expressly excludes from its coverage ''[w]astes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials''. Because the IAEA Code of Practice is an international instrument applying specifically to radioactive materials, radioactive waste is excluded from the scope of the Basel Convention.)

Under the Atomic Energy Act of 1954, as amended, NRC has the statutory responsibility for authorizing the export and import of byproduct, source, and special nuclear material. The NRC regulates the import and export of these materials under 10 CFR Part 110. Until now, NRC's regulations in Part 110 were concerned primarily with exports and imports that have nuclear proliferation significance. Thus, radioactive materials that have little or no significance with respect to national security (proliferation), such as LLW, have not been subject to specific licensing. Rather, radioactive waste has been allowed to leave the United States under general export licenses pursuant to §§ 110.21–110.23, and to enter the United States under similar Part 110 provisions in § 110.27. (After entry into the United States, the domestic regulations of the NRC and Agreement States apply.) During the development of this rulemaking, the NRC, in consultation with other government agencies, published an advance notice of proposed rulemaking (ANPR) on February 7, 1990 (55 FR 4181) to seek comments from the public, industry, and other government agencies on four possible options and thirteen associated questions for establishing an NRC policy on radioactive waste exports and imports. The comments received in response to the ANPR were considered in a proposed rule published in the **Federal Register** on April 28, 1992 (57 FR 17859). The comments on the proposed rule were considered in the development of the definitions, exceptions, procedures, and licensing criteria of the final rule.

II. Analysis of Public Comments on Proposed Rule

Seventeen letters of comment were received in response to the proposed rule from individuals, organizations, industry, and government agencies. One letter was subsequently withdrawn.

One commenter believed that the NRC should not permit any category of radioactive waste to be moved into or out of the United States, except perhaps in a few extraordinary circumstances. Another commenter urged the NRC to ban all imports and exports of radioactive waste. The NRC does not agree with these highly restrictive approaches. International commerce in radioactive waste, including movement of waste into and out of the United States, may be desirable from a policy perspective. For example, some commerce involving radioactive waste may further important policy goals of the international community (such as waste shipments for international research) and other shipments may embody desirable take-back features (such as return of U.S. Government radioactive waste and shipments of used radioactive sources to authorized consignees).

Other commenters urged the NRC to exempt from specific licensing controls movements of sealed sources that are being returned to the U.S. or another country for reconditioning, recycling or reprocessing. They noted that, while the supplementary information of the proposed rule incorporated this view, no such provision was expressly provided in the regulations. The NRC believes that there should be an exclusion from the definition of ''radioactive waste'' in Part 110 for movements of sealed sources and devices containing sealed sources to any qualified manufacturer authorized to receive and possess them. These types of transfers help to ensure that the materials are handled responsibly and not left in dispersed and perhaps unregulated locations around the world, and therefore they should not be subject to specific licensing if the radioactive material involved would not otherwise be subject to such licensing. The definition of radioactive waste has been revised to exclude these shipments.

One commenter expressed the view that export and import of LLW should be treated no differently from sealed sources and radiopharmaceuticals, opining that all radioactive materials should be handled consistently. It is not clear whether this means that the regulations should apply the same treatment to waste and non-waste forms of radioactive material, or whether the commenter simply believes that all types of radioactive waste should be treated identically. The NRC believes that the former approach would not be consistent with the view embodied in the Code of Practice that there should be a special regime for transboundary movements of radioactive waste. The NRC is in general agreement with the position that most radioactive waste should be handled consistently, but in some situations there are policy considerations that militate in favor of a different result. An example of this is found in the exclusion of certain sealed sources from the definition of ''radioactive waste'', discussed above. Other exceptions are discussed elsewhere in the supplementary information.

Several commenters said that NRC's policy on regulation of export and import of radioactive waste for waste management purposes needs modification. They opined that import and export for waste management purposes, as distinct from disposal, should not be subject to specific licensing under Part 110. One of these commenters, representing businesses in decommissioning and environmental restoration activities, said that specific licensing should not be required for volume reduction, treatment, and resource recovery. Others argued that waste management practices should be encouraged internationally without unnecessary restrictions as rising disposal costs make them more feasible and cost effective, especially when residual LLW will be returned to the country of origin. In response to these comments, the NRC has made special provisions for certain shipments intended for recycling or resource recovery. (See the provisions in the final rule relating to incidental radioactive material.) However, though the proposed rule published in 1992 did have an exclusion for return of radioactive waste to a consignee in the country that previously exported the radioactive material, after careful consideration of the comments, the NRC has concluded that a general exemption for waste going to the country of origin would not ensure conformity with the Code of Practice. A country that exports radioactive material may not have adequate means to handle its management or disposal when returned as radioactive waste. Further, such a broad exemption would leave too large a regulatory gap, permitting a country of origin to be used as a way station for waste intended for disposition elsewhere. Thus, this change also addresses the concerns of commenters who expressed apprehension that radioactive waste might be exported from the U.S. under false pretenses.

Three commenters were of the view that specific licenses should not be required for transboundary movements of what the final rule terms ''incidental radioactive material''—i.e., radioactive material not otherwise subject to specific licensing under Part 110 that is contained in or a contaminant of any

non-hazardous, non-radioactive material that is exported or imported for recycling or resource recovery of the non-radioactive component. The Commission agrees that such movements should not require the issuance of a specific license because, by definition, the immediate purpose of these shipments is not waste management or disposal of the radioactive component. The rule helps to ensure the purpose is bona fide by limiting the use of the term ''incidental radioactive material'' to situations in which the exported material will not be processed for separation of the radioactive component before the recycling or resource recovery occurs or during the resource recovery process. However, since in these cases the radioactive component of the material being shipped has, in itself, no foreseeable use, the Commission believes that some form of regulatory oversight of these exports is required in order to help ensure that an exporter will not ship radioactive waste for disposal in another country under the guise of shipping usable materials for recycling or resource recovery. The proposed rule was somewhat ambiguous on this point. Therefore, the final regulations have been clarified in that regard. (The term ''incidental radioactive material'' is applied to the radioactive component of the exported material, rather than a term identifying the radioactive component as a form of radioactive waste, because the Commission believes that this will avoid unnecessary limitations on the usefulness of the material for recycling or resource recovery.)

Under the rule proposed in 1992, an exporter of material that contains or is contaminated with radioactive material for which no use is foreseen was generally required to file an NRC Form 7 before the export took place and the export required a specific license issued by the NRC. Under the final rule, an exporter of incidental radioactive material will still be required to file an NRC Form 7 before the export takes place (if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms), but the NRC will not issue a specific license in these cases. Shipments involving incidental radioactive material will continue to take place under the general license provisions in §§ 110.19–110.30. Deliberate misrepresentations on the form are subject to the same penalties as apply to falsification of other documents submitted in matters involving the United States and may subject a person to criminal sanctions under section 223 of the Atomic Energy Act. To help clarify the application of the rule in these cases, definitions of ''incidental radioactive material'' and ''management'' have been added in the final rule.

Several commenters were concerned that the proposed definition of ''radioactive waste'' was too vague and subjective, possibly leading to an exporter shipping radioactive waste for disposal in another country under the guise of shipping usable materials for recycling or resource recovery. Several other commenters, including one representing electrical utilities in the United States, criticized the proposed definition of radioactive waste as differing from the various waste terms in other parts of NRC's regulations. One said that the definition had not been sufficiently evaluated by affected parties and that basing it upon whether ''use is foreseen'' is unprecedented in NRC's regulations and represents new NRC thinking which could have implications beyond the amendments to Part 110. The NRC recognizes that the concept of foreseeable use, introduced by the IAEA Code of Practice, could cause some confusion. Therefore, in response to these concerns, the definition of ''radioactive waste'' has been clarified to provide for usage of the term in a manner that is generally more consistent with NRC's usage for domestic purposes. As so defined, the export and import of radioactive waste requires issuance of a specific license under Part 110.

Generally, the final rule requires the filing of an NRC Form 7 for export of radioactive waste, as was provided under the proposed rule. Exports of radioactive waste remain subject to the specific licensing requirements of Part 110, unless expressly excluded. In addition, an NRC Form 7 must be filed before the export of incidental radioactive material (if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms), but in most instances a specific license will not be required for such an export. Information required to be reported on NRC Form 7 is listed in 10 CFR 110.32.

Under the final rule, imports of radioactive waste are also subject to the specific licensing provisions of Part 110. Imports of incidental radioactive material, however, do not require the filing of any information with the NRC and remain subject to the general licensing provisions of Part 110. This is considered sufficient in light of the extensive domestic regulatory program to which they will be subject when they enter the United States.

One commenter said the proposed regulation was unclear on NRC's position on imports and exports of mixed waste (i.e., waste that consists of hazardous waste and radioactive waste). It is the NRC's view that with respect to radioactive waste components of mixed waste, such transboundary movements should be subject to the specific licensing requirements of Part 110, and the definitions of ''incidental radioactive material'' and ''radioactive waste'' reflect this position. Accordingly, the NRC, under the Atomic Energy Act, will license movements of mixed waste into and out of the United States. The Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act and the NRC under the Atomic Energy Act jointly regulate exports of mixed waste from the jurisdiction of the United States. The NRC will consult with the EPA regarding Part 110 license applications relating to movements of mixed waste. (Domestically, mixed waste is subject to applicable regulations of the EPA and NRC.) A sentence has been added to § 110.19 alerting potential shippers to the fact that an NRC license does not avoid the need to consult with the EPA regarding the hazardous component of mixed waste.

One commenter stated its view that service tooling used in nuclear facilities contaminated with radioactive materials is not radioactive waste as defined in the proposed rule. It was not NRC's intent to include as radioactive waste exports and imports of contaminated equipment (including service tools) used in nuclear facilities, if the equipment is being shipped for use in another such facility and not for management or disposal. While one could reasonably maintain that this is not a question of radioactive waste at all, to ensure that the NRC's intent is free from doubt, the definition of ''radioactive waste'' in the final rule clarifies this point.

Two commenters expressed concern that the information required on an application for a specific license did not include the date, time, and route of transit of the radioactive waste, or a statement of ultimate disposition of the waste. The NRC believes that at the time of filing an application for a specific license it may be too early for an exporter or importer to provide a precise shipping date and time. However, the approximate date of shipment is required to be stated. In addition, the NRC has added a requirement for the route of transit information to be

provided before the export or import takes place.

One Federal official asked how other Federal agencies would be notified of an application for a specific license. The Department of State, as lead Executive Branch agency for the review of nuclear exports, has agreed to notify other appropriate Federal agencies. For an import application, the NRC would itself seek the views of appropriate Federal and State agencies. The NRC recognizes the unique interest and responsibilities of the States under the Low-level Radioactive Waste Policy Act for safe management and disposal of LLW. Therefore, consultation with affected States is appropriate.

One commenter expressed concern that the proposed rule did not include a provision for informing LLW compacts before issuance of a specific license for import or export of radioactive waste. Section 110.70(b) has been revised to require that the Commission publish in the **Federal Register** a notice of receipt of an application for a specific license for the export or import of radioactive waste (other than incidental radioactive material). To promote consideration of LLW compacts' restrictions on waste disposal, the Commission will exchange information and views with interested compacts. The NRC also intends to take other reasonable steps to inform States and LLW compacts of pending requests for specific licenses for import or export of radioactive waste, but believes it to be unnecessary to spell this out in the regulations.

One commenter suggested that the Department of Transportation and the Customs Service should be able to initiate efforts to determine the validity of statements made with respect to a particular export or import. The Commission expects that if the Department of Transportation or the Customs Service encounters a questionable export, they will seek assistance from the NRC. The NRC will then work with the Department of State and other concerned parties in resolving questions raised in such circumstances.

Another commenter referred, among other things, to the proposed rule's inconsistency with NRC's below regulatory concern (BRC) policy. The BRC policy has been withdrawn by the NRC (See 58 FR 44610; August 24, 1993).

One commenter suggested offering the import and export licensing program to the Agreement States for administration over its licensees. The NRC disagrees with this suggestion. This transfer would be inconsistent with Section 274 c. of the Atomic Energy Act, which specifically provides that no agreement entered into under the Agreement States program shall provide for discontinuance of any NRC authority with respect to the export from or import into the United States of byproduct, source, or special nuclear material. However, NRC's export and import licensing authority does not diminish any separate authority vested in States and LLW compacts, by the Atomic Energy Act or the Low-Level Radioactive Waste Policy Act, in regard to the licensing, handling, and disposal of radioactive materials within the United States.

III. Overview of New Rule

The purpose of this rule is to conform NRC's regulations on export and import of nuclear equipment and material with the principles of the IAEA Code of Practice on the International Transboundary Movement of Radioactive Waste. The Code's guidelines state that each individual country should take the appropriate steps necessary to ensure that the international transboundary movement of radioactive waste is managed safely. This rule is designed to serve that purpose.

The final rule requires that a person file an application with the NRC for a specific license to export or import radioactive waste, including mixed waste, but distinguishes a separate category of ''incidental radioactive material''. Radioactive waste subject to the specific licensing requirements of Part 110 may not be exported from or imported into the United States unless the NRC has granted such a license. The export and import of incidental radioactive material (i.e., radioactive material not subject to the specific licensing controls of Part 110 that is contained in or a contaminant of any non-hazardous, non-radioactive material that is exported or imported for recycling or resource recovery) continues to be covered by the general license provisions of Part 110. However, an exporter must file an NRC Form 7 before a shipment of incidental radioactive material takes place if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms. (Use of the 100 kilogram threshold is consistent with the threshold established in § 110.27(b). This provision provides that a general license may not be used for import of source or special nuclear material in the form of irradiated fuel that exceeds 100 kilograms per shipment.) The final rule takes into account changes made in Part 110 by the final rule on Specific Licensing of Exports of Certain Alpha-Emitting Radionuclides and Byproduct Material, published on September 26, 1994 (59 FR 48994).

The NRC has decided that it is consistent with the IAEA Code of Practice not to include the following within the definition of radioactive waste:

(These kinds of shipments will continue to enter or leave the United States under general or specific license, whichever is applicable under Part 110 to the nuclear material in question.)

1. Radioactive material in used sealed sources, or devices containing used sealed sources, being sent to any qualified manufacturer authorized to receive and possess them. This exclusion acknowledges that shipment of used sources to a qualified manufacturer should be handled as expeditiously as possible because these types of shipments help to ensure that used sources are handled in a safe and responsible manner.

2. Radioactive material that is a contaminant on equipment (including service tools) used in nuclear facilities, if the equipment is being shipped for use in another nuclear facility and is not being shipped for management or disposal. This exclusion recognizes that equipment used in nuclear facilities frequently becomes contaminated. However, this does not prevent the equipment from being used to service other nuclear facilities instead of being subject to disposal or waste management.

3. Return of military and other U.S. Government radioactive waste to the United States when destined for a Federal or military facility authorized to possess the waste (see § 110.27). This exclusion from specific licensing was requested by the Department of State.

4. Radioactive waste generated in support of U.S. Government waste research and development testing programs under international arrangements. This exclusion recognizes that shipment of the waste is not for the purpose of disposal or waste management and that the exclusion will facilitate government-to-government waste research programs.

In addition incidental radioactive material can continue to enter or leave the country without specific NRC approval. However, an export of incidental radioactive material requires the filing of an NRC Form 7 if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms.

In applying for a specific license, applicants for the export or import of radioactive waste must include the information required by §§ 110.31 and

110.32 of Part 110 for export and import of nuclear equipment and material. In addition, this final rule also requires the submission of the following information for the proposed export or import of radioactive waste: information on the volume and classification of the waste, the chemical and physical characteristics of the waste, its routing (including countries to be transited), and its disposition (including waste management). In the case of proposed imports, the information provided must include the industrial or other process responsible for generation of the waste and whether the compact and host State have agreed to accept the waste. The application must contain sufficient information to allow NRC to make a determination on whether a license should be granted. A notice of receipt of each application for a specific license for export or import of radioactive waste will be published in the **Federal Register**.

As is the case with all applications for a specific license for export of radioactive material, the review of an application for a specific license for a proposed export of radioactive waste is governed by whether licensing the proposed export would be inimical to the common defense and security interests of the United States. The Commission's review is also governed by whether the receiving country consents to receipt of the radioactive waste.

It is NRC's policy that the agency normally will not consider extraterritorial impacts. The latter policy was enunciated by the Commission in Westinghouse Electric Corporation (Exports to the Philippines), CLI–80–14, 11 NRC 631 (1980), where (among other things) the Commission refused to consider the health, safety, and environmental impacts on Philippine citizens of a proposed reactor export to the Philippines on the ground that the Commission should not consider such impacts upon the citizens of another country. (Though there was some divergence in the reasoning of the judges, the Commission's decision was upheld in *NRDC* v. *NRC,* 647 F.2d 1345 (D.C. Cir. 1981).) The rationale for the Commission's conclusion was that the regulation of economic and industrial activities taking place within a nation's territorial boundaries is a function of the territorial sovereign.

The IAEA Code of Practice provides in clear terms that a receiving State should not permit receipt of radioactive waste for management or disposal unless the receiving country has an appropriate ''administrative and technical capacity and regulatory structure to manage and dispose of such waste in a manner consistent with international safety standards.'' In contrast, the Code of Practice is far from clear when it states that it is the sending State's obligation to satisfy itself ''in accordance with the receiving State's consent'' that the receiving State is meeting the foregoing requirement. The Code does not explain the intended meaning of the phrase ''in accordance with the receiving State's consent,'' and it does not indicate how the sending State is expected to satisfy itself regarding the receiving State's capability.

The NRC will expect a receiving State to indicate to the Department of State, during the process for obtaining the receiving State's consent, that it has found that it has the administrative and technical capacity and regulatory structure to manage and dispose of the waste. At this time, however, the NRC is not prepared to include provisions in this final rule that would necessitate independent and specific NRC assessments and findings and an opportunity for adjudication regarding the adequacy of the receiving State's administrative and technical capacity and regulatory structure for managing and disposing of the waste. This decision flows from (1) The ambiguity of the guiding provision in the IAEA Code, (2) the NRC's longstanding policy of not considering health, safety and environmental impacts in foreign countries, (3) the ongoing work—under the aegis of the IAEA—to develop a Convention on Safety of Radioactive Waste Management, and (4) Congressional inaction regarding implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal. Nevertheless, as indicated in the notice for the proposed rule, the NRC does not contemplate any circumstances in which a license would be issued to export radioactive waste to a country without a regulated waste disposal program. Moreover, the Commission would obtain the views of the Executive Branch before approving an application for export of radioactive waste.

Note that this rule does not address on a generic basis the applicability of the National Environmental Policy Act to Part 110 specific licensing actions. Such applicability (if any) will be determined on a case-by-case basis. Note also that export licenses and (with limited exceptions not relevant here) actions related to nuclear activities are exempt from the requirements of Executive Order 12114 (44 FR 1957; January 4, 1979), Environmental Effects Abroad of Major Federal Actions.

NRC has exclusive jurisdiction, vis-a-vis the States, for granting or denying all import licenses. However, in the case of a proposed import, the NRC recognizes the authority of LLW compacts to decide whether or not to accept an import of LLW for disposal in the compact region. The NRC will consult with interested States and LLW compacts prior to issuing an import license for LLW. The NRC will not grant an import license for waste intended for disposal unless it is clear that the waste will be accepted by a disposal facility, host State, and compact (where applicable). This will be part of the determination regarding the appropriateness of the facility that has agreed to accept the waste for management or disposal.

The NRC will consult with the Department of State and other cognizant Federal agencies regarding proposed exports of radioactive waste. In addition, in all proposed export and import cases, the NRC will ask the Department of State to consult with transit countries, as the Department of State deems appropriate, to obtain any necessary approvals pursuant to the IAEA Code of Practice.

Following review by the NRC staff, a determination will be made whether to approve or deny the application for a specific license for the import or export of radioactive waste. An import or export license issued by the NRC only authorizes the radioactive waste covered by the license to enter or exit the United States. This license alone does not authorize possession of the waste material or guarantee access to a waste management facility or a disposal site in the United States or another country.

This rule requires specific licenses for exports and imports of mixed waste. Mixed waste is waste that consists of both hazardous waste and radioactive waste. In addition to meeting NRC requirements, mixed waste must also meet Environmental Protection Agency requirements applicable to the hazardous component of the waste. The exporter or importer is responsible for ensuring compliance with those requirements.

The rule does not cover the export or import of naturally-occurring radioactive material (other than source material and byproduct material under section 11 e.(2) of the Atomic Energy Act) and accelerator-produced radioactive material. Naturally-occurring radioactive material and accelerator-produced radioactive material lie outside NRC's regulatory authority and are subject to health and

safety regulation by the States and other Federal agencies.

The new regulations in Part 110 do not affect existing or future NRC regulations in other parts of this chapter which may relate to matters covered by this rule.

The Commission notes that violation of regulations issued under sections 161b, 161i, or 161o of the Atomic Energy Act of 1954 may subject a person to criminal sanctions under section 223 of the Atomic Energy Act. The regulations in Part 110 that are not issued under §§ 161b, 161i, or 161o of the Atomic Energy Act of 1954 for the purposes of section 223 of the Act are listed in § 110.67 of Part 110, as amended by this final rule. The following regulations amended by this final rule are not listed in § 110.67: §§ 110.19, 110.20, 110.21, 110.22, 110.23, and 110.27. Violation of these sections may subject a person to criminal sanctions under section 223 of the Atomic Energy Act.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These paperwork requirements were approved by the Office of Management and Budget, approval numbers 3150–0036 and 3150–0027.

The public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0036 and 3150–0027), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

NRC regulations provide strong regulatory control over the export of strategic nuclear material from a national security (nonproliferation) standpoint, but they have traditionally provided much less control over non-strategic materials. Many non-strategic imports and exports qualify for general licenses without specific review or approval by the NRC. (Domestic regulations in the United States and abroad, and international transportation regulations, have provided the primary regulatory controls for health and safety and environmental protection purposes.) In recent years, national and worldwide concerns about radioactive waste disposal practices have brought attention to the limited focus of the NRC's import and export regulations and the fact that certain types and quantities of radioactive materials, including LLW, may be imported or exported without specific authorization by the NRC and without NRC's knowledge.

The IAEA Code of Practice on the International Transboundary Movement of Radioactive Waste, which was approved by the IAEA General Conference in 1990 with strong U.S. Government support, provides that international shipments of radioactive wastes should take place only with the prior notification and consent of the sending, receiving and transit countries. The Code also provides that no receiving country should permit the receipt of radioactive waste for management or disposal unless it has the administrative and technical capacity and regulatory structure to manage and dispose of such waste in a manner consistent with international safety standards. This final rule is intended to conform U.S. regulations with these international guidelines. The final rule amends the Part 110 general license provisions applicable to the export and import of special nuclear, source, and byproduct materials to state specifically that general licenses do not provide authority to import or export radioactive waste, as defined by Part 110. Instead, persons desiring to import or export radioactive waste may do so only upon issuance of a specific license by the NRC. Persons desiring to export incidental radioactive material (i.e., radioactive material not otherwise subject to specific licensing under Part 110 that is contained in or a contaminant of any non-hazardous, non-radioactive material that is exported or imported for recycling or resource recovery of the non-radioactive component) are required to file an NRC Form 7 if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms, thus providing information about the proposed export, but the NRC will not issue a specific license for such exports. Instead, the material may continue to be shipped under general license. Imports of incidental radioactive material continue to be subject to general licensing under Part 110, but they do not require any filing of information with the NRC under Part 110.

The rule impacts persons interested in exporting radioactive waste from, or importing radioactive waste into, the United States, and those exporting or importing incidental radioactive material (i.e., radioactive material not subject to specific licensing under Part 110 combined with non-hazardous, non-radioactive material exported or imported for recycling or resource recovery). The rule is necessary to satisfy the U.S. Government's commitment to the Code of Practice. There are no alternatives other than rulemaking for achieving the stated objective. (Alternatives to the changes made by this final rule were discussed in the ANPR published in February 1990 and the proposed rule published in April 1992.) We expect that there will be few exports and imports per year that will be covered by the new requirements established by the rule. (There should actually be little, if any, effect on those importing incidental radioactive material.) The agency also believes that, outside of having to pay a licensing fee, this regulation will have a minimal impact on the affected exporters and importers, since they should have ready access to most of the information required to be submitted to the NRC.

The NRC has considered the resource implications for the agency in developing this final rule, and based on analogous NRC experience under Part 110, it is estimated that a typical waste export or import licensing case resulting from this final rule will require 40 to 50 NRC staff hours for review and processing. It is estimated that the cost associated with such review and processing will, on the average, be approximately $5,000 per case, though a few cases (particularly the first license applications received) may cost as much as $10,000. The total annual cost to the NRC is expected to be approximately $50,000, which would be offset by the collection of application fees.

To the NRC's knowledge, there is no appreciable U.S. import or export traffic in radioactive waste. A possible exception is the widely accepted

practice of returning depleted sealed radioactive sources to a manufacturer for recycle or disposal. This practice is generally encouraged by governmental authorities as a way of helping to ensure that the items are handled in a responsible manner at the end of their useful life. For this reason such shipments are excluded from the definition of ''radioactive waste'' in the final rule.

The changes made by this rule could affect waste management companies interested in importing radioactive waste from other countries because the imports will now require specific import licenses from the NRC, and an individual import of this type may not satisfy the licensing criteria. However, it is not clear whether this licensing requirement imposes any more difficult obstacles to a prospective waste importer than does the authority given LLW compacts to block shipments of such waste into their respective jurisdictions. (Note that the function of new § 110.43, which sets forth import licensing criteria, is primarily to bring together criteria stated in other sections of Part 110. That the host State and compact do not object to the importation of the waste will be part of the determination regarding the appropriateness of the facility that has agreed to accept the waste for management purposes or disposal.)

The final rule focuses greater attention on shipments of radioactive waste from or into the United States. This is consistent with the intent of the recommendations of the Code of Practice. The rule effectively excludes from the new requirements for specific licensing export and import of sealed sources, and devices containing sealed sources, to manufacturers qualified to receive and possess them; export and import of contaminated service equipment used in nuclear facilities, if the service equipment is being shipped for use in another nuclear facility and not for management purposes or disposal; and import of government waste returning to the United States. These exclusions from the specific licensing requirements for export and import of radioactive waste, the limited nature of the requirement for export of incidental radioactive material (confined to filing of NRC Form 7), and the absence of any new requirement with respect to import of incidental radioactive material, help to minimize the impact of the rule on commercial activities in the United States. Persons applying for a specific license will be subject to license application fees, which are currently under $10,000 per license. (Fees for licensing services rendered by the NRC pursuant to 10 CFR Part 110 are covered in 10 CFR Part 170.) We do not expect that an annual fee will be assessed because we do not foresee that any significant NRC inspection or enforcement activities will result from this final rule.

Overall, the NRC believes that requiring specific licensing of radioactive waste coming into or leaving the United States for management purposes or disposal is a sound regulatory approach to help ensure that such shipments are subject to U.S. Government approval and the consent of other involved parties. Filing of an NRC Form 7 before export of incidental radioactive material (if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms) will help ensure that the regulatory program is effective.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule establishes specific licensing requirements on the import and export of radioactive waste coming into or leaving the United States, pursuant to which certain information must be filed with the NRC. It also clarifies the application of these requirements with respect to the import and export of incidental radioactive material. The additional burden for the collection of this information is estimated to average 20 hours per response, which will increase the cost of the shipment only by a minimal amount. In all, the amendments to Part 110 are expected to result in fewer than ten new export and import licenses per year.

Backfit Analysis

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

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub.L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a) (9) also issued under sec. 903, Pub.L. 102–496 (42 U.S.C. 2151 *et seq.*).

2. Section 110.2 is amended by adding the terms *disposal, incidental radioactive material, management, radioactive material, radioactive waste, storage,* and *treatment* to read as follows:

§ 110.2 Definitions.

* * * * *

Disposal means permanent isolation of radioactive material from the surrounding environment.

* * * * *

Incidental radioactive material means any radioactive material not otherwise subject to specific licensing under this part that is contained in or a contaminant of any non-radioactive material that:

(1) For purposes unrelated to the regulations in this part, is exported or imported for recycling or resource recovery of the non-radioactive component; and

(2) Will not be processed for separation of the radioactive component before the recycling or resource recovery occurs or as part of the resource recovery process.

The term does not include material that contains or is contaminated with ''hazardous waste'' as defined in section

1004(5) of the Solid Waste Disposal Act, 42 U.S.C. 6903(5).

* * * * *

Management means storage, packaging, or treatment of radioactive waste.

* * * * *

Radioactive material means source, byproduct, or special nuclear material.

Radioactive waste means any waste that contains or is contaminated with source, byproduct, or special nuclear material, including any such waste that contains or is contaminated with ''hazardous waste'' as defined in section 1004(5) of the Solid Waste Disposal Act, 42 U.S.C. 6903(5), but such term does not include radioactive material that is—

(1) Contained in a sealed source, or device containing a sealed source, that is being returned to any manufacturer qualified to receive and possess the sealed source or the device containing a sealed source;

(2) A contaminant on service equipment (including service tools) used in nuclear facilities, if the service equipment is being shipped for use in another nuclear facility and not for waste management purposes or disposal; or

(3) Generated or used in a United States Government waste research and development testing program under international arrangements.

* * * * *

Storage means the temporary holding of radioactive material.

* * * * *

Treatment means any method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of any radioactive material.

* * * * *

3. Section 110.19 is revised to read as follows:

§ 110.19 Types of licenses.

(a) Licenses for the export and import of nuclear equipment and material in this part consist of two types: General licenses and Specific licenses. Except as provided in paragraph (b) of this section, a general license is effective without the filing of an application with the Commission or the issuance of licensing documents to a particular person. A specific license is issued to a named person and is effective upon approval by the Commission of an application filed pursuant to the regulations in this part and issuance of licensing documents to the applicant. Issuance of a specific or general license under this part does not relieve a person from complying with applicable regulations of the Environmental Protection Agency for any export or import that contains or is contaminated with hazardous waste.

(b) A person using a general license under this part as authority to export incidental radioactive material that is contained in or a contaminant of a shipment that exceeds 100 kilograms in total weight shall file a completed NRC Form 7 before the export takes place.

4. In § 110.20, paragraph (a) is revised to read as follows:

§ 110.20 General license information.

(a) A person may use an NRC general license as authority to export or import nuclear equipment or material (including incidental radioactive material), if the nuclear equipment or material to be exported or imported is covered by the NRC general licenses described in §§ 110.21 through 110.30.

(1) A person using a general license under this part as authority to export incidental radioactive material that is contained in or a contaminant of a shipment that exceeds 100 kilograms in total weight shall file a completed NRC Form 7 before the export takes place.

(2) If an export or import is not covered by the NRC general licenses described in §§ 110.21 through 110.30, a person must file an application with the Commission for a specific license in accordance with §§ 110.31 through 110.32.

* * * * *

5. Section 110.21 is amended by revising the introductory texts of paragraphs (a) and (b), revising paragraph (c), and adding new paragraphs (d) and (e) to read as follows:

§ 110.21 General license for the export of special nuclear material.

(a) Except as provided in paragraph (d) of this section, a general license is issued to any person to export the following to any country not listed in § 110.28:

* * * * *

(b) Except as provided in paragraph (d) of this section, a general license is issued to any person to export the following to any country not listed in § 110.28 or § 110.29:

* * * * *

(c) Except as provided in paragraph (d) of this section, a general license is issued to any person to export Pu–236 or Pu–238 to any country listed in § 110.30 in individual shipments of 1 gram or less, not to exceed 100 grams per year to any one country.

(d) The general licenses in paragraphs (a), (b), and (c) of this section do not authorize the export of special nuclear material in radioactive waste.

(e) Persons using the general licenses in paragraphs (a), (b), and (c) of this section as authority to export special nuclear material as incidental radioactive material shall file a completed NRC Form 7 before the export takes place if the total weight of the shipment exceeds 100 kilograms.

6. Section 110.22 is amended by revising the introductory text of paragraph (a), revising paragraphs (b), (c), and (d), and adding new paragraphs (e) and (f) to read as follows:

§ 110.22 General license for the export of source material.

(a) Except as provided in paragraph (e) of this section, a general license is issued to any person to export the following to any country not listed in § 110.28:

* * * * *

(b) Except as provided in paragraph (e) of this section, a general license is issued to any person to export uranium or thorium, other than U–230, U–232, Th–227, or Th–228, in individual shipments of 10 kilograms or less to any country not listed in § 110.28 or § 110.29, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is of Canadian origin.

(c) Except as provided in paragraph (e) of this section, a general license is issued to any person to export uranium or thorium, other than U–230, U–232, Th–227, or Th–228, in individual shipments of 1 kilogram or less to any country not listed in § 110.29, not to exceed 100 kilograms per year to any one country.

(d) Except as provided in paragraph (e) of this section, a general license is issued to any person to export U–230, U–232, Th–227, or Th–228 in individual shipments of 10 kilograms or less to any country listed in § 110.30, not to exceed 1,000 kilograms per year to any one country or 500 kilograms per year to any one country when the uranium or thorium is of Canadian origin.

(e) Paragraphs (a), (b), (c), and (d) of this section do not authorize the export under general license of source material in radioactive waste.

(f) Persons using the general licenses in paragraphs (a), (b), (c), and (d) of this section as authority to export source material as incidental radioactive material shall file a completed NRC Form 7 before the export takes place if the total weight of the shipment exceeds 100 kilograms.

7. Section 110.23 is amended by revising the introductory text of

paragraph (a), revising paragraphs (b) and (c), and adding new paragraphs (d) and (e) to read as follows:

§ 110.23 General license for the export of byproduct material.

(a) Except as provided in paragraph (d) of this section, a general license is issued to any person to export the following to any country not listed in § 110.28:

* * * * *

(b) Except as provided in paragraph (d) of this section, a general license is issued to any person to export to the countries listed in § 110.30 tritium in any dispersed form (e.g., luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds) in quantities of 40 curies (4.12 milligrams) or less per item, not to exceed 1,000 curies (103 milligrams) per shipment or 10,000 curies (1.03 grams) per year to any one country. This general license does not authorize exports for tritium recovery or recycling purposes.

(c) Except as provided in paragraph (d) of this section, a general license is issued to any person to export to the countries listed in § 110.30 actinium-225, actinium-227, californium-248, californium-250, californium-252, curium-240, curium-241, curium-242, curium-243, curium-244, einsteinium-252, einsteinium-253, einsteinium-254, einsteinium-255, fermium-257, gadolinium-148, mendelevium-258, polonium-208, polonium-209, polonium-210, and radium-223, except that polonium-210 when contained in static eliminators must not exceed 100 curies (22 grams) per individual shipment.

(d) Paragraphs (a), (b), and (c) of this section do not authorize the export under general license of byproduct material in radioactive waste.

(e) Persons using the general licenses in paragraphs (a), (b), and (c) of this section as authority to export byproduct material as incidental radioactive material shall file a completed NRC Form 7 before the export takes place if the total weight of the shipment exceeds 100 kilograms.

8. Section 110.27 is amended by revising the introductory text of paragraph (a), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 110.27 General license for imports.

(a) Except as provided in paragraphs (b) and (c) of this section, a general license is issued to any person to import byproduct, source, or special nuclear material if the consignee is authorized to possess the material under:

* * * * *

(c) Paragraph (a) of this section does not authorize the import under general license of radioactive waste, other than radioactive waste that is being returned to a United States Government or military facility in the United States which is authorized to possess the material.

* * * * *

9. Section 110.32 is amended by revising the heading, redesignating paragraph (f)(5) as (f)(7), and adding new paragraphs (f)(5) and (f)(6) to read as follows:

§ 110.32 Information required in an application for a specific license/NRC Form 7.

* * * * *

(f) * * *

(5) For proposed exports or imports of radioactive waste, and for proposed exports of incidental radioactive material—the volume, classification (as defined in § 61.55 of this chapter), physical and chemical characteristics, route of transit of shipment, and ultimate disposition (including forms of management) of the waste.

(6) For proposed imports of radioactive waste—the industrial or other process responsible for generation of the waste, and the status of the arrangements for disposition, e.g., any agreement by a low-level waste compact or State to accept the material for management purposes or disposal.

* * * * *

10. In § 110.40, paragraph (a) is revised to read as follows:

§ 110.40 Commission review.

(a) Immediately after receipt of a license application for an export or import requiring a specific license under this part, the Commission will initiate its licensing review and, to the maximum extent feasible, will expeditiously process the application concurrently with any applicable review by the Executive Branch.

* * * * *

11. Section 110.41 is amended by redesignating paragraphs (a)(7) and (a)(8) as paragraphs (a)(8) and (a)(9) and adding a new paragraph (a)(7) to read as follows:

§ 110.41 Executive Branch review.

(a) * * *

(7) An export involving radioactive waste.

* * * * *

12. Section 110.42 is amended by revising the introductory text of paragraph (a) and paragraphs (a)(3) and (c) and adding a new paragraph (d) to read as follows:

§ 110.42 Export licensing criteria.

(a) The review of license applications for export for peaceful nuclear uses of production or utilization facilities [1] or for export for peaceful nuclear uses of special nuclear or source material requiring a specific license under this part is governed by the following criteria:

* * * * *

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Physical security measures will be deemed adequate if such measures provide a level of protection equivalent to that set forth in § 110.44.

* * * * *

(c) Except where paragraph (d) is applicable, the review of license applications for export of byproduct material or for export of source material for non-nuclear end uses requiring a specific license under this part is governed by the criterion that the proposed export is not inimical to the common defense and security.

(d) The review of license applications for the export of radioactive waste requiring a specific license under this part is governed by the following criteria:

(1) The proposed export is not inimical to the common defense and security.

(2) The receiving country, after being advised of the information required by § 110.32(f)(5), finds that it has the administrative and technical capacity and regulatory structure to manage and dispose of the waste and consents to the receipt of the radioactive waste. In the case of radioactive waste containing a nuclear material to which paragraph (a) or (b) of this section is applicable, the criteria in this paragraph (d) shall be in addition to the criteria provided in paragraph (a) or (b) of this section.

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[1] Exports of nuclear reactors, reactor pressure vessels, reactor primary coolant pumps, ''on-line'' reactor fuel charging and discharging machines, and complete reactor control rod systems, as specified in paragraphs (1) through (4) of appendix A to this part, are subject to the export licensing criteria in § 110.42(a). Exports of nuclear reactor components, as specified in paragraphs (5) through (9) of appendix A to this part, when exported separately from the items described in paragraphs (1) through (4) of appendix A of this part, are subject to the export licensing criteria in § 110.42(b).

§§ 110.43, 110.44, and 110.45 [Redesignated]

13. Sections 110.43, 110.44, and 110.45 are redesignated as §§ 110.44, 110.45, and 110.46.

14. A new § 110.43 is added to read as follows:

§ 110.43 Import licensing criteria.

The review of license applications for imports requiring a specific license under this part is governed by the following criteria:

(a) The proposed import is not inimical to the common defense and security.

(b) The proposed import does not constitute an unreasonable risk to the public health and safety.

(c) Any applicable requirements of subpart A of part 51 of this chapter are satisfied.

(d) With respect to the import of radioactive waste, an appropriate facility has agreed to accept the waste for management or disposal.

15. Section 110.45 is amended by revising paragraphs (b) and (c) to read as follows:

§ 110.45 Issuance or denial of licenses.

* * * * *

(b) The Commission will issue an import license if it finds that:

(1) The proposed import will not be inimical to the common defense and security;

(2) The proposed import will not constitute an unreasonable risk to the public health and safety;

(3) The requirements of subpart A of part 51 of this chapter (to the extent applicable to the proposed import) have been satisfied; and

(4) With respect to a proposed import of radioactive waste, an appropriate facility has agreed to accept the waste for management or disposal.

(c) If, after receiving the Executive Branch judgement that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under the Atomic Energy Act, the Commission will publicly issue a decision to that effect and will submit the license application to the President. The Commission's decision will include an explanation of the basis for the decision and any dissenting or separate views. The provisions in this paragraph do not apply to Commission decisions regarding license applications for the export of byproduct material or radioactive waste requiring a specific license.

* * * * *

16. In § 110.67, paragraph (b) is revised to read as follows:

§ 110.67 Criminal Penalties.

* * * * *

(b) The regulations in part 110 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 110.1, 110.2, 110.3, 110.4, 110.7, 110.10, 110.11, 110.30, 110.31, 110.32, 110.40, 110.41, 110.42, 110.43, 110.44, 110.45, 110.46, 110.51, 110.52, 110.60, 110.61, 110.62, 110.63, 110.64, 110.65, 110.66, 110.67, 110.70, 110.71, 110.72, 110.73, 110.80, 110.81, 110.82, 110.83, 110.84, 110.85, 110.86, 110.87, 110.88, 110.89, 110.90, 110.91, 110.100, 110.101, 110.102, 110.103, 110.104, 110.105, 110.106, 110.107, 110.108, 110.109, 110.110, 110.111, 110.112, 110.113, 110.120, 110.122, 110.124, 110.130, 110.131, 110.132, 110.133, 110.134, and 110.135.

17. Section 110.70 is amended by revising paragraph (a), adding a new paragraph (b)(4), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 110.70 Public notice of receipt of an application.

(a) The Commission will notice the receipt of each license application for an export or import for which a specific license is required by placing a copy in the Public Document Room.

(b) * * *

(4) Radioactive waste.

(c) The Commission will also publish in the **Federal Register** a notice of receipt of a license application for an import of radioactive waste for which a specific license is required.

* * * * *

18. Section 110.72 is amended by revising the introductory text to read as follows:

§ 110.72 Availability of documents in the Public Document Room.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each license and license application for an import or export requiring a specific license under this Part will be made available in the Public Document Room:

* * * * *

19. Section 110.82(a) is revised to read as follows:

§ 110.82 Hearing request or intervention petition.

(a) A person may request a hearing or petition for leave to intervene on a license application for an import or export requiring a specific license.

* * * * *

Dated in Rockville, Maryland, this 14th day of July, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–17826 Filed 7–20–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASW–09]

Revision of Class E Airspace; Venice, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action revises the Class E airspace at Venice, LA. This revision of Class E airspace results from the abandoning of the Garden Island Bay Seaplane Base, LA, and the decommissioning of the Venice Radio Beacon (RBN). This action is intended to delete the Class E airspace at Venice, LA, that was previously needed to protect aircraft operating under instrument flight rules (IFR) at the now abandoned Garden Island Bay Seaplane Base, LA, and removes that airspace needed to protect aircraft operating IFR on standard instrument approach procedures (SIAP) using the Venice RBN which is now decommissioned.

DATES: *Effective date.* 0901 UTC, August 7, 1995.

Comment date. Comments must be received on or before September 19, 1995.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 95–ASW–09, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest

Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves the revision of Class E airspace at Venice, LA, and was not preceded by notice and public procedure, comments are invited on the rule. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Interested parties are invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace providing controlled airspace for IFR operations at Venice, LA. The current Class E airspace description includes airspace to protect aircraft operating under IFR at Garden Island Bay Seaplane Base, LA. That base is now abandoned. Therefore, the Class E airspace is no longer needed. The current Class E airspace description also includes airspace to protect aircraft flying the Venice RBN SIAP at Venice, LA. This RBN is now decommissioned. Therefore, the Class E airspace protecting the SIAP is no longer needed.

Since this action merely involves the removal of Class E airspace as a result of the abandoning of the Garden Island Bay Seaplane Base, LA, and the decommissioned Venice NDB. Therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. The Class E airspace must be revised to avoid confusion on the part of the pilots flying in the vicinity of the abandoned seaplane base, and to promote the safe and efficient handling of air traffic in the area.

Therefore, I find that notice and public procedure under 5 U.S.C. 553 are unnecessary and good cause exists for making this amendment effective in less than thirty days.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

ASW LA E5 Venice, LA [Revised]

Venice, LA
(Lat. 29°15′32″N, long. 89°21′10″W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of Venice, LA.

* * * * *

Issued in Fort Worth, TX, on July 13, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–18004 Filed 7–20–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 95–ASW–04]

Revocation of Class D Airspace; Fort Worth Spinks, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action revokes the Class D airspace at Forth Worth Spinks Airport, TX. The decommissioning of the Fort Worth Spinks control tower on April 1, 1995, removes the need for controlled airspace extending upward from the surface to but not including 2,500 feet Mean Sea Level (MSL) within a 4.1-mile radius of the airport. This action is intended to revoke the unnecessary Class D airspace.

DATES: *Effective date:* 0901 UTC, August 7, 1995.

Comment date. Comments must be received on or before September 19, 1995.

ADDRESSES: Send comments on the rule in triplicate to Manager, System Management Branch, Air Traffic Division, Federal Aviation Administration Southwest Region, Docket No. 95–ASW–04, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves the revocation of Class D airspace at Fort Worth Spinks Airport, TX, and was not preceded by notice and public procedure, comments are invited on the rule. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Interested parties are invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16,1 994, which is incorporated by reference in 14 CFR 71.1. The Class D 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) revokes the Class D airspace, providing controlled airspace for terminal instrument operations, located at Fort Worth Spinks Airport, TX. The current Class D airspace was supported by a control tower, which was decommissioned, effective on April 1, 1995.

Since this action merely involves the revocation of Class D airspace as a result of closing the airport control tower, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Since there will no longer be a control tower at Fort Worth Spinks Airport, the Class D airspace must be removed to avoid confusion on the part of the pilots flying in the vicinity of the airport, and to promote the safe and efficient handling of air traffic in the area. Therefore, I find that notice and public procedure under 5 U.S.C. 553 are unnecessary and good cause exists for making this amendment effective in less than thirty days.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ASW TX D Fort Worth Spinks, TX [Removed]

* * * * *

Issued in Fort Worth, TX, on July 13, 1995.

Albert L. Viselli,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 95–18005 Filed 7–20–95; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1204

RIN 2700–AC09

Administrative Authority and Policy

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending its regulations on ''Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government'' to include appropriate documentation for adding the Moffett Federal Airfield and the Crows Landing Airport to the list of NASA airfield facilities.

EFFECTIVE DATE: July 21, 1995.

FOR FURTHER INFORMATION CONTACT: David B. Dingee, Aircraft Management Office, 202–358–2326.

SUPPLEMENTARY INFORMATION: NASA published its final rule, 14 CFR part 1204 subpart 14, in the **Federal Register** on July 29, 1991 (56 FR 35812). It established responsibility, conditions, and procedures for the use of NASA airfield facilities by aircraft not operated for the benefit of the Federal Government. This amendment adds the necessary documentation to the regulation for adding the Moffett Federal Airfield and Crows Landing Airport to the list of NASA airfield facilities. This action is administrative in nature and does not require a period for public comment.

NASA has determined that this regulation is not a major rule as defined in Executive Order 12866.

This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

List of Subjects in 14 CFR Part 1204

Airports, Authority delegations (Government agencies), Federal buildings and facilities, Government contracts, Government employees, Government procurement, Grant programs: Science and technology, Intergovernmental relations, Labor unions, Security measures, Small businesses.

For reasons set out in the preamble, 14 CFR Part 1204, Subpart 14, is amended as follows:

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

Subpart 14—Use of NASA Airfield Facilities by Aircraft Not Operated for the Benefit of the Federal Government

1. The authority citation for Subpart 14 continues to read as follows:

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

2. Section 1204.1401 is amended by adding paragraphs (a) (3) and (4) to read as follows:

§ 1204.1401 Definitions.

* * * * *

(a) * * *

(3) *Moffett Federal Airfield (MFA).* The aeronautical facility which is part of the Ames Research Center, Moffett Field, California, and is located at 122° 03′ west longitude and 37° 25′ north latitude.

(4) *Crows Landing Airport.* The aeronautical facility which is a part of the Crows Landing Flight Facility (CLEF) and is located at 121° 06′ west longitude and 37° 25′ north latitude, 45 miles east of the Ames Research Center.

* * * * *

3. Section 1204.1403 is amended by revising paragraphs (c) and (d) and

adding paragraphs (e) and (f) to read as follows:

§ 1204.1403 Available airport facilities.

* * * * *

(c) *Moffett Federal Airfield—(1) Runways.* There are two parallel runways, 32–14, both in satisfactory to good condition. The runways and taxiways are concrete and/or asphalt. Runway 32R–14L is 9,200 feet long, 200 feet wide; 32L–14R is 8,125 feet long, 200 feet wide with a 600 foot displaced threshold on 32L.

(2) *Parking areas and hangar space.* Hangar space is not available; concrete parking ramp space is available as directed by the control tower.

(3) *Control tower.* The control tower normally operates from 0700 to 2300 local time, 7 days a week, excluding Federal holidays. The tower frequencies are 126.2 Mhz, 353.2 Mhz, and 340.2 Mhz. When the tower is operating, FAA regulations pertaining to the operation of aircraft at airports with an operating tower (§ 91.87 of this title) will apply. When the tower is not in operation, all aircraft operations will be conducted by Moffett UNICOM on the tower frequency. FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* An Instrument Landing System (ILS) is installed. An ILS/DME approach to runway 32R and an LOC/DME approach to runway 14L are published in DOD Flight Information Publication (Terminal), Low Altitude United States, Volume 2. ILS frequency is 110.35 Mhz, identifiers are Runway 32R, I–NUQ; Runway 14L, I–MNQ; Tactical Airborne Navigation (TACAN) (DME) is Channel 123, identifier is NUQ. Precision Approach Path Indicators (PAPI) are to be installed by July 1, 1995, to provide visual reference for the ILS and LOC approaches to runways 32R and 14L. A TACAN with approved and published approaches is operational at the facility (identification is NUQ, Channel 123). A Radio Controlled Lighting System (RCLS) is operational for the runway lights on 32R–14L; 3 clicks within 5 seconds, low intensity; 5 clicks, medium intensity; 7 clicks, high intensity (tower frequency, 126.2 Mhz). Lights automatically extinguish after 15 minutes.

(5) *Hazards.* Large blimp hangars (approximately 200 feet high) bracket the parallel runways, one on the west side, two on the east side. A freeway at the approach end of 32L displaces the threshold 600 feet.

(6) *Emergency equipment.* Aircraft Rescue and Fire Fighting (ARFF) equipment is provided by the California Air National Guard continuously in accordance with U.S. Air Force Regulations.

(d) *Crows Landing Airport*—(1) *Runways.* There are two concrete runways, 35–17 and 30–12, both in satisfactory condition. Parallel taxiways are asphalt overlay or concrete. Runway 35–17 is 7,950 feet long, 200 feet wide; runway 30–12 is 6,975 feet long, 200 feet wide.

(2) *Parking areas and hangar space.* Hangars/hangar space do not exist; concrete parking ramp space is available as directed by the control tower.

(3) *Control tower.* The control tower normally operates only when research flight is scheduled by NASA-Ames. The airfield is closed at all other times except as arranged by other Federal users with the Chief, Airfield Management Office, Moffett Federal Airfield. The tower frequencies are 125.05 Mhz, 126.2 Mhz, 328.1 Mhz, and 337.8 Mhz. When the tower is operating, FAA regulations pertaining to the operation of aircraft at airports with an operating tower (§ 91.87 of this title) will apply. When the tower is not operating, all aircraft operations will be conducted with Crows Landing UNICOM on the primary tower frequency. FAA regulations pertaining to the operation of aircraft at airports without an operating control tower (§ 91.89 of this title) will apply.

(4) *Navigation aids.* Crows Landing Airport is a VFR facility. No certified NAVAIDS or published approach procedures exist.

(5) *Hazards.* Crows Landing Airport is located in an agricultural area. No obstructions exist within or immediately adjacent to the airspace. The most persistent potential hazard is that of agricultural aircraft (crop dusters) without radios which transit the airspace.

(6) *Emergency equipment.* Aircraft Rescue and Fire Fighting (ARFF) equipment and services are provided by the California Air National Guard only during published hours of operation.

(e) *Other facilities.* No facilities or services other than those described above are available except on an individual emergency basis to any user.

(f) *Status of facilities.* Changes to the status of the KSC, WFF, MFA, and CLFF facilities will be published in appropriate current FAA or DOD aeronautical publications.

4. Section 1204.1404 is amended by adding paragraph (a)(3) to read as follows:

§ 1204.1404 Requests for use of NASA airfield facilities.

(a) * * *

(3) *Moffett Federal Airfield and Crows Landing Flight Facility.* Chief, Airfield Management Office, Ames Research Center, Mail Stop 158–1, Moffett Field, California 94035–1000.

* * * * *

5. Section 1204.1405 is amended by adding paragraph (c) to read as follows:

§ 1204.1405 Approving authority.

* * * * *

(c) *Moffett Federal Airfield and Crows Landing Flight Facility.* Chief, Airfield Management Office, Ames Research Center, NASA.

Dated: June 13, 1995.

Daniel S. Goldin,

Administrator.

[FR Doc. 95–17927 Filed 7–20–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8602]

RIN 1545–AS18
RIN 1545–AS26
RIN 1545–AS65

Lobbying Expense Deductions—Dues, Allocation of Costs to Lobbying Activities, and Influencing Legislation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that define influencing legislation for purposes of the deduction disallowance for certain amounts paid or incurred in connection with influencing legislation. It also contains final regulations concerning allocating costs to influencing legislation or the official actions or positions of certain federal executive branch officials and the deductibility of dues (and other similar amounts) paid to certain tax-exempt organizations. These regulations are necessary because of changes made to the Internal Revenue Code by the Omnibus Budget Reconciliation Act of 1993. These rules will assist businesses and certain tax-exempt organizations in complying with the Internal Revenue Code.

DATES: These regulations are effective July 21, 1995.

For dates of applicability, see §§ 1.162–20, paragraphs (c)(5) and (d), 1.162–28(h), and 1.162–29(h).

FOR FURTHER INFORMATION CONTACT: James M. Guiry, (202) 622–1585 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1993, the IRS published in the **Federal Register** temporary regulations (58 FR 68294 [TD 8511, 1994–1 C.B. 37]) under section 162 of the Internal Revenue Code (Code) relating to the dues deduction disallowance and a notice of proposed rulemaking (58 FR 68334 [IA–60–93, 1994–1 C.B. 802]) cross-referencing the temporary regulations. On the same day, the IRS published in the **Federal Register** a notice of proposed rulemaking (58 FR 68330 [IA–57–93, 1994–1 C.B. 797]) under section 162 of the Code relating to the allocation of costs to lobbying activities. On May 13, 1994, the IRS published in the **Federal Register** a notice of proposed rulemaking (59 FR 24992 [IA–23–94, 1994–1 C.B. 809]) under section 162 concerning the definition of influencing legislation. Written comments responding to the notices were received and public hearings were held on allocating costs to lobbying activities on April 6, 1994, and on influencing legislation on September 12, 1994. After careful consideration of all the comments, the proposed regulations are adopted, as revised and renumbered by this document. The issues described in this preamble are the principal issues considered in adopting the final regulations. However, a number of other technical and clarifying changes were made.

Lobbying Expense Deductions—Dues—§ 1.162–20

The proposed regulations are adopted without change.

Allocation of Costs to Lobbying Activities—§ 1.162–28

The proposed regulations generally describe the costs that are properly allocable to lobbying activities and permit taxpayers to use any reasonable method to allocate those costs between lobbying activities and other activities. Under the proposed regulations, a method is not reasonable unless it is applied consistently, allocates a proper amount of costs (including labor costs and general and administrative costs) to lobbying activities, and is consistent with certain special rules of the regulations. The proposed regulations provide that a taxpayer may use the following methods of allocating costs to lobbying activities: (1) The ratio method; (2) the gross-up method; and (3) an allocation method that applies the principles of section 263A and the regulations thereunder.

While the proposed regulations are intended to allow any reasonable method, some commentators interpreted the proposed regulations as treating only the three specified methods as reasonable methods of allocating costs. The final regulations clarify that taxpayers may use any reasonable method of allocating costs to lobbying activities, including, but not limited to, the three specified methods.

Some commentators stated that the regulations should provide that a cost allocation method is not unreasonable simply because it allocates a lesser amount of costs to lobbying activities than any one of the three specified methods. Whether any other allocation method is reasonable depends on the facts and circumstances of a particular case. The three specified methods, alone or in combination, do not establish a baseline allocation against which to compare other methods.

The proposed regulations direct taxpayers to see section 6001 and the regulations thereunder for recordkeeping requirements. Numerous commentators requested additional guidance concerning recordkeeping for lobbying activities. Some commentators recommended that the regulations should provide that the IRS will accept good faith or reasonable estimates of time spent on lobbying activities. Other commentators recommended that the regulations, like the preamble to the proposed regulations, should state explicitly that taxpayers are not required to maintain any particular records of costs of lobbying activities, such as daily time reports, daily logs, or similar documents.

Section 6001 already requires a taxpayer to keep records necessary for the taxpayer to apply its reasonable method of allocating costs to lobbying activities. Thus, each taxpayer must use methods appropriate for its trade or business. The proposed regulations, nevertheless, do not require a taxpayer to maintain its records of costs of lobbying activities in any particular form. The IRS and Treasury believe that the final regulations should not provide guidance concerning recordkeeping in addition to that already provided in section 6001 and, therefore, no changes were made in response to these suggestions.

Under the ratio method of the proposed regulations, a taxpayer multiplies its total costs of operations (excluding third-party costs) by a fraction, the numerator of which is the taxpayer's lobbying labor hours and the denominator of which is the taxpayer's total labor hours. The taxpayer adds the result of this calculation to its third-party costs to allocate its costs to lobbying activities.

The proposed regulations define the term *total costs of operations* as the total costs of the taxpayer's trade or business for a taxable year, excluding third-party costs. Commentators questioned the scope of the definition and suggested that certain costs should be excluded from the definition. For example, several commentators inquired whether total costs of operations means costs reflected on a company's financial statements or its tax returns. In addition, commentators inquired whether the term included depreciation, charitable contributions, or federal tax expenses. With respect to tax-exempt organizations, commentators inquired whether total costs of operations included the costs of educational conferences, conventions, books and other publications, and unrelated business activities. Among the costs that commentators recommended excluding from the definition of total costs of operations are purchases and other costs of goods sold and all third-party costs unrelated to lobbying activities.

As indicated above, the final regulations clarify that taxpayers may use any reasonable method of allocating costs to lobbying activities. The regulations set forth the ratio method as one simplified method that taxpayers have the option of using. If the regulations were modified to provide a specific definition of total costs of operations encompassing a complex set of exclusions designed to suit the circumstances of all businesses, the ratio method would no longer be a simplified method and would require complex analysis by taxpayers and the IRS. Therefore, the definition of total costs of operations is not changed in the final regulations. Taxpayers who do not find the simple ratio method appropriate to their circumstances may use another reasonable method.

The proposed regulations provide that for purposes of the ratio method, a taxpayer may treat as zero the lobbying labor hours of personnel engaged in secretarial, maintenance, and other similar activities. The IRS and Treasury invited comments on whether this rule will distort the costs allocated to lobbying activities. Most commentators responded favorably to this rule. Some indicated that the administrative benefits far outweighed any minimal distortion. Commentators also requested guidance concerning the term ''other similar activities.''

The final regulations clarify that a taxpayer using the ratio method may

treat as zero the hours of personnel engaged in secretarial, clerical, support, and other administrative activities (as opposed to activities involving significant judgment with respect to lobbying activities). For example, because para-professionals and analysts when engaged in a lobbying activity may engage in activities involving significant judgments with respect to the lobbying activity, taxpayers may not treat their time as zero.

Under the gross-up method of the proposed regulations, a taxpayer allocates costs to lobbying activities by multiplying the taxpayer's basic labor costs for lobbying labor hours by 175 percent. For this purpose, the taxpayer's basic labor costs are limited to wages or other similar costs of labor, such as guaranteed payments for services. Thus, for example, pension costs and other employee benefits are not included in basic labor costs. As with the ratio method, third party costs are then added to the result of the calculation to arrive at the total costs to allocate to lobbying activities.

Although the proposed gross-up method provides a simple way to calculate costs allocated to lobbying activities, some commentators noted that the proposed gross-up method did not simplify recordkeeping because taxpayers had to keep track of the lobbying labor hours of clerical and support staff in order to determine lobbying labor costs.

In response to this concern, the final regulations provide an alternative gross-up method. Under this alternative, taxpayers may treat as zero the lobbying labor hours of personnel who engage in secretarial, clerical, support, and other administrative activities that do not involve significant judgment with respect to the lobbying activity. However, if a taxpayer uses this alternative, it must multiply costs for lobbying labor hours by 225 percent.

Many commentators suggested that the proposed gross-up percentage of 175 percent was too high, based on information from their industry. The gross-up factors (including the 225 percent factor added to the final regulations) are intended to approximate the average gross-up factors for all taxpayers. The IRS and Treasury believe that these factors are the appropriate factors as averages for all taxpayers. If the regulations were further modified to provide a set of gross-up factors to suit the circumstances of various businesses or industries, the gross-up method would no longer be a simplified method. The final regulations clarify that taxpayers may use any reasonable method of allocating costs to lobbying activities. Thus, taxpayers who do not find the gross-up method appropriate to their circumstances may use another reasonable method.

The proposed regulations provide that taxpayers that do not pay or incur reasonable labor costs for persons engaged in lobbying activities may not use the ratio method or the gross-up method. Several commentators requested that the IRS reconsider this restriction. In addition, some commentators expressed concern that this restriction would prevent tax-exempt organizations from using the ratio method or gross-up method if they used volunteers in their lobbying activities. One commentator inquired whether an exempt organization that uses volunteers should account for the time of volunteers in allocating costs to lobbying activities.

The final regulations provide that all taxpayers may use the ratio method, but prohibit use of the gross-up method by a taxpayer (other than one subject to section 6033(e)) that does not pay or incur reasonable labor costs for its personnel engaged in lobbying. Moreover, tax-exempt organizations affected by the lobbying disallowance rules can use the gross-up method or the ratio method even if some of their lobbying activities are conducted by volunteers. Because volunteers are not taxpayers' personnel, time spent by volunteers is excluded from the taxpayer's lobbying labor hours and total labor hours (although the hours may be included in their employer's lobbying labor hours or total labor hours).

Under the proposed regulations, taxpayers who use the ratio method or the gross-up method must account for certain third-party costs. The proposed regulations define these third-party costs as amounts paid or incurred for lobbying activities conducted by third parties (such as amounts paid to lobbyists and dues that are allocable to lobbying expenditures) and amounts paid or incurred for travel and entertainment relating to lobbying activities.

Some commentators asked that the final regulations clarify that the lobbying-related travel and entertainment expenses of an employee of the taxpayer are not treated as third-party costs for either the ratio or gross-up method. The IRS and Treasury intend for taxpayers to account for employee travel and entertainment expenses separately as third-party costs under both methods.

Thus, the final regulations do not adopt this recommendation. However, the final regulations clarify that if a cost defined as a third-party cost is allocable only partially to lobbying activities, then only that portion of the cost must be allocated to lobbying activities under the ratio method and gross-up method.

The proposed regulations provide a special de minimis rule for labor hours spent by personnel on lobbying activities. Under this de minimis rule, a taxpayer may treat time spent by personnel on lobbying activities as zero if less than five percent of the person's time is spent on lobbying activities.

The de minimis rule for labor hours does not apply to direct contact lobbying with legislators and covered executive branch officials. Thus, all hours spent by a person on direct contact lobbying as well as the hours that person spends in connection with direct contact lobbying (such as background meetings) must be allocated to lobbying activities. For this purpose, an activity is direct contact lobbying if it is a meeting, telephone conversation, letter, or other similar means of communication with a legislator (other than a local legislator), or covered executive branch official (as defined in section 162(e)(6)) and otherwise qualifies as a lobbying activity.

Commentators requested that the de minimis percentage be increased and that the direct contact exception be eliminated. The final regulations do not adopt these recommendations. The final regulations do, however, clarify that the direct contact exception applies only to the individuals who make the direct contact, not to support personnel who engage in research, preparation, and other background activities but who do not make a direct contact.

Influencing Legislation—§ 1.162–29

The proposed regulations provide definitions of *influencing legislation* and other terms necessary to apply the rules. In general, commentators approved of these definitions. The final regulations modify the definitions only to clarify their application. However, no substantive change is intended by these modifications.

Some commentators stated that the final regulations should distinguish between influencing legislation and educating legislators. The final regulations do not adopt this suggestion. The IRS and Treasury believe that the statute does not draw this distinction and neither should the regulations. Activities undertaken to educate a legislator may constitute influencing legislation under definitions in the final regulations. Further, the legislative history confirms that Congress did not

intend to provide an exception for providing technical advice or assistance.

The proposed regulations provide that a lobbying communication is any communication that (1) refers to specific legislation and reflects a view on that legislation, or (2) clarifies, amplifies, modifies, or provides support for views reflected in a prior lobbying communication. The proposed regulations provide that the term *specific legislation* includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the taxpayer either supports or opposes.

Several commentators stated that the phrase ''reflects a view'' should be defined to mean an explicit statement of support or opposition to legislative action. Some commentators also suggested that the regulations should make clear that a taxpayer is not reflecting a view on specific legislation if it presents a balanced analysis of the merits and defects of the legislation.

The final regulations do not adopt either of these recommendations. A taxpayer can reflect a view on specific legislation without specifically stating that it supports or opposes that legislation. Thus, as illustrated in § 1.162–29(b)(2), *Example 8*, a taxpayer reflects a view on specific legislation even if the taxpayer does not explicitly state its support for, or opposition to, action by a legislative body. Moreover, a taxpayer's balanced or technical analysis of legislation reflects a view on some aspect of the legislation and, thus, is a lobbying communication.

The proposed regulations do not contain a definition of the term ''specific legislative proposal,'' but do contain several examples to illustrate the scope of the term. For instance, in *Example 5* of § 1.162–29(b)(2) of the proposed regulations, a taxpayer prepares a paper indicating that increased savings and local investment will spur the state economy. The taxpayer forwards a summary of the paper to legislators with a cover letter that states, in part:

> You must take action to improve the availability of new capital in the state.

The example concludes that the taxpayer has not made a lobbying communication because neither the summary nor the cover letter refers to a specific legislative proposal.

In *Example 6* of that section, a taxpayer prepares a paper concerning the benefits of lowering the capital gains tax rate. The taxpayer forwards a summary of the paper to its representative in Congress with a cover letter that states, in part:

> I urge you to support a reduction in the capital gains tax rate.

The example concludes that the taxpayer has made a lobbying communication because the communication refers to and reflects a view on a specific legislative proposal.

Numerous commentators stated that they do not perceive a distinction between the two examples. In addition, certain commentators requested that the term ''specific legislative proposal'' be defined.

Whether a communication refers to a specific legislative proposal may vary with the context. The communication in *Example 5* is not sufficiently specific to be a specific legislative proposal, and no other facts and circumstances indicate the existence of a specific legislative proposal to which the communication refers. In *Example 6*, however, support is limited to a proposal for reduction of a particular tax rate. Although commentators suggested a number of definitions of the term ''specific legislative proposal,'' none was entirely satisfactory in capturing the full range of communications referred to in section 162(e)(4)(A). Thus, the final regulations do not adopt these suggestions.

The proposed regulations provide that an attempt to influence legislation means a lobbying communication and all activities such as research, preparation, and other background activities engaged in for a purpose of making or supporting a lobbying communication. The purpose or purposes for engaging in an activity are determined based on all the facts and circumstances.

The proposed regulations provide two presumptions concerning the purpose for engaging in an activity that is related to a lobbying communication. The first presumption provides that if an activity relating to a lobbying communication is engaged in for a nonlobbying purpose prior to the first taxable year preceding the taxable year in which the communication is made, the activity is presumed to be engaged in for all periods solely for that nonlobbying purpose (favorable presumption). Conversely, the second presumption provides that if an activity relating to a lobbying communication is engaged in during the taxable year in which the lobbying communication is made or the immediately preceding taxable year, the activity is presumed to be engaged in solely for a lobbying purpose (adverse presumption).

The adverse presumption was intended to prevent taxpayers from abusing an intent- or purpose-based rule by labelling their lobbying activities as mere monitoring. On the other hand, the favorable presumption provides substantial certainty to taxpayers who engage in an activity for a nonlobbying purpose a sufficient time before a lobbying communication is made.

While commentators approved of the purpose test, many criticized the presumptions. Many commentators argued that the presumptions would create unreasonable recordkeeping burdens requiring detailed records concerning the purpose of a taxpayer's every activity. Several commentators also argued that the presumptions operated over too great a period of time and recommended that, if retained, they should apply to a period of 6 months or, alternatively, a calendar year. A number of commentators expressed a belief that the presumptions created a 2-year lookback recharacterizing activities as lobbying activities. Other commentators further argued that the presumptions used undefined terms and would be difficult to rebut.

Although the presumptions were intended as an aid in identifying activities that were more or less likely to be lobbying activities, the IRS and Treasury believe that the presumptions have been viewed by the commentators as undermining and complicating the purpose-based test. Therefore, the final regulations eliminate the presumptions, replacing them with a list of some of the facts and circumstances to be considered in determining whether an activity is engaged in for a lobbying purpose.

In addition, in response to various comments concerning the treatment of activities engaged in for the purpose of deciding to lobby, the final regulations clarify that the activity of deciding to lobby is to be treated in the same manner as research, preparation, and other background activities. Thus, a taxpayer who engages in the decision-making process may be treated as engaged in that activity for a lobbying purpose. This rule applies to a taxpayer who alone or as part of a group is deciding whether a lobbying communication should be made.

Under the proposed regulations, if a taxpayer engages in an activity for a lobbying purpose and for some nonlobbying purpose, the taxpayer must treat the activity as engaged in partially for a lobbying purpose and partially for a nonlobbying purpose (multiple-purpose rule). While many commentators approved of a facts and circumstances analysis to determine whether a taxpayer engages in an activity for a lobbying purpose, some of these commentators thought that an activity should be subject to section

162(e)(1)(A) only if the principal or primary purpose of the activity is to make or support a lobbying communication. According to these commentators, a principal or primary purpose rule would be easier to administer than the proposed multiple purpose rule. Several commentators noted that a principal or primary purpose test would eliminate the burden of dividing the costs of an activity among purposes under the proposed multiple-purpose rule.

The IRS and Treasury continue to believe that a principal or primary purpose test does not avoid the necessity of determining the various purposes for engaging in an activity and the relative importance of those purposes, and it has a substantial ''cliff'' effect. Therefore, the final regulations do not adopt a principal or primary purpose test.

The proposed regulations do not specify methods for accomplishing a reasonable cost allocation in the case of multiple purpose activities. Rather, the proposed regulations specify two methods that may not be appropriate. A taxpayer's treatment of multiple purpose activities will, in general, not result in a reasonable allocation if it allocates to influencing legislation (1) only the incremental amount of costs that would not have been incurred but for the lobbying purpose; or (2) an amount based on the number of purposes for engaging in that activity without regard to the relative importance of those purposes.

Some commentators requested additional guidance (by way of example) concerning how a taxpayer should determine the ''relative importance'' of purposes. In response to these comments, the final regulations are clarified to treat allocations based solely upon the number of purposes for engaging in an activity as generally not reasonable. The IRS and Treasury intend this change to indicate that an allocation based on the number of purposes may be reasonable if it reflects the relative importance of various purposes, even if the allocation is not precise. For instance, if a taxpayer engages in an activity for two purposes of substantially similar importance, treating the activity as engaged in 50 percent for each purpose is reasonable.

The final regulations provide special rules for activities engaged in for a lobbying purpose (including deciding to lobby) where the taxpayer later concludes that no lobbying communication will be made regarding that activity. Specifically, the final regulations treat these activities as if they had not been engaged in for a lobbying purpose if, as of the taxpayer's timely filed return, the taxpayer no longer expects, under any reasonably foreseeable circumstances, that a lobbying communication will be made that is supported by the activity. Thus, the taxpayer need not treat any amount allocated to that activity for that year under § 1.162–28 as an amount to which section 162(e)(1)(A) applies. On the other hand, if the taxpayer reaches that conclusion at any time after the filing date, then the amount (not previously satisfying these special rules) allocated to that activity under § 1.162–28 is treated as an amount that is paid or incurred only at that time and that is not subject to section 162(e)(1)(A). Thus, in effect, the taxpayer is treated as if it incurred the costs relating to that activity in that later year in connection with a nonlobbying activity. A special rule is provided for exempt organizations to which section 6033(e) applies, which permits those organizations to instead treat these amounts as reducing (but not below zero) their expenditures to which section 162(e)(1) applies beginning with that year and continuing for subsequent years to the extent not treated in prior years as reducing those expenditures.

The proposed regulations provide a special rule for so-called ''paid volunteers.'' If, for the purpose of making or supporting a lobbying communication, one taxpayer uses the services or facilities of a second taxpayer and does not compensate the second taxpayer for the full cost of the services or facilities, the purpose and actions of the first taxpayer are imputed to the second taxpayer. Thus, for example, if a trade association uses the services of a member's employee, at no cost to the association, to conduct research or similar activities to support the trade association's lobbying communication, the trade association's purpose and actions are imputed to the member. As a result, the member is treated as influencing legislation with respect to the employee's work in support of the trade association's lobbying communication.

The IRS and Treasury intended the special imputation rule to deny a deduction for the amounts paid or incurred by a taxpayer participating in a group activity involving a lobbying purpose and a lobbying communication, even if the lobbying communication was made by a person other than the taxpayer. The final regulations clarify the rule. In addition, in response to commentators who requested clarification on when an employer must account for employee volunteer lobbying activities, the final regulations provide, by way of example, that if a taxpayer's employee not acting within the scope of employment volunteers to engage in activities influencing legislation, then the taxpayer is not influencing legislation.

Certain commentators have indicated that participation in the activities of government advisory bodies, such as federal advisory committees, should be exempt from section 162(e). Commentators argued that federal advisory committees provide information and advice to assist the federal government in matters it specifies, not to influence legislation.

The statutory term *influencing legislation* includes lobbying communications with government employees or officials who may participate in the formulation of legislation. Section 162(e) does not except lobbying communications made by participating in federal advisory committees. Further, the legislative history strongly suggests that no exceptions were intended other than for communications pursuant to subpoena or similar compulsion. Thus, participating in a federal advisory committee is influencing legislation if the purpose of the participant's activities is to make or support a lobbying communication, even if the lobbying communication is made by another participant or by the federal advisory committee as a whole.

The proposed regulations defining influencing legislation propose an effective date of May 13, 1994. Several commentators requested that the effective date of the final regulations be the date they are published or later. The final regulations on influencing legislation adopt this suggestion and are effective as of the date of publication, as are the final regulations on allocating costs to lobbying activities. Taxpayers must adopt a reasonable interpretation of section 162(e) for amounts paid or incurred prior to the effective date.

Special Analyses

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

Administration for comment on its impact on small business.

Drafting Information: The principal author of these final regulations is James M. Guiry of the Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.162–20, paragraphs (c)(5) and (d) are added to read as follows:

§ 1.162–20 Expenditures attributable to lobbying, political campaigns, attempts to influence legislation, etc., and certain advertising.

* * * * *

(c) * * *

(5) *Expenses paid or incurred after December 31, 1993, in connection with influencing legislation other than certain local legislation*. The provisions of paragraphs (c)(1) through (3) of this section are superseded for expenses paid or incurred after December 31, 1993, in connection with influencing legislation (other than certain local legislation) to the extent inconsistent with section 162(e)(1)(A) (as limited by section 162(e)(2)) and §§ 1.162–20(d) and 1.162–29.

(d) *Dues allocable to expenditures after 1993*. No deduction is allowed under section 162(a) for the portion of dues or other similar amounts paid by the taxpayer to an organization exempt from tax (other than an organization described in section 501(c)(3)) which the organization notifies the taxpayer under section 6033(e)(1)(A)(ii) is allocable to expenditures to which section 162(e)(1) applies. The first sentence of this paragraph (d) applies to dues or other similar amounts whether or not paid on or before December 31, 1993. Section 1.162–20(c)(3) is superseded to the extent inconsistent with this paragraph (d).

§ 1.162–20T [Removed]

Par. 3. Section 1.162–20T is removed.

Par. 4. Section 1.162–28 is added to read as follows:

§ 1.162–28 Allocation of costs to lobbying activities.

(a) *Introduction*—(1) *In general*. Section 162(e)(1) denies a deduction for certain amounts paid or incurred in connection with activities described in section 162(e)(1) (A) and (D) (*lobbying activities*). To determine the nondeductible amount, a taxpayer must allocate costs to lobbying activities. This section describes costs that must be allocated to lobbying activities and prescribes rules permitting a taxpayer to use a reasonable method to allocate those costs. This section does not apply to taxpayers subject to section 162(e)(5)(A). In addition, this section does not apply for purposes of sections 4911 and 4945 and the regulations thereunder.

(2) *Recordkeeping*. For recordkeeping requirements, see section 6001 and the regulations thereunder.

(b) *Reasonable method of allocating costs*—(1) *In general*. A taxpayer must use a reasonable method to allocate the costs described in paragraph (c) of this section to lobbying activities. A method is not reasonable unless it is applied consistently and is consistent with the special rules in paragraph (g) of this section. Except as provided in paragraph (b)(2) of this section, reasonable methods of allocating costs to lobbying activities include (but are not limited to)—

(i) The ratio method described in paragraph (d) of this section;

(ii) The gross-up method described in paragraph (e) of this section; and

(iii) A method that applies the principles of section 263A and the regulations thereunder (see paragraph (f) of this section).

(2) *Taxpayers not permitted to use certain methods*. A taxpayer (other than one subject to section 6033(e)) that does not pay or incur reasonable labor costs for persons engaged in lobbying activities may not use the gross-up method. For example, a partnership or sole proprietorship in which the lobbying activities are performed by the owners who do not receive a salary or guaranteed payment for services does not pay or incur reasonable labor costs for persons engaged in those activities and may not use the gross-up method.

(c) *Costs allocable to lobbying activities*—(1) *In general*. Costs properly allocable to lobbying activities include labor costs and general and administrative costs.

(2) *Labor costs*. For each taxable year, labor costs include costs attributable to full-time, part-time, and contract employees. Labor costs include all elements of compensation, such as basic compensation, overtime pay, vacation pay, holiday pay, sick leave pay, payroll taxes, pension costs, employee benefits, and payments to a supplemental unemployment benefit plan.

(3) *General and administrative costs*. For each taxable year, general and administrative costs include depreciation, rent, utilities, insurance, maintenance costs, security costs, and other administrative department costs (for example, payroll, personnel, and accounting).

(d) *Ratio method*—(1) *In general*. Under the ratio method described in this paragraph (d), a taxpayer allocates to lobbying activities the sum of its third-party costs (as defined in paragraph (d)(5) of this section) allocable to lobbying activities and the costs determined by using the following formula:

$$\frac{\text{Lobbying labor hours}}{\text{Total labor hours}} \times \text{Total costs of operations.}$$

(2) *Lobbying labor hours*. Lobbying labor hours are the hours that a taxpayer's personnel spend on lobbying activities during the taxable year. A taxpayer may use any reasonable method to determine the number of labor hours spent on lobbying activities and may use the de minimis rule of paragraph (g)(1) of this section. A taxpayer may treat as zero the lobbying labor hours of personnel engaged in secretarial, clerical, support, and other administrative activities (as opposed to activities involving significant judgment with respect to lobbying activities). Thus, for example, the hours spent on lobbying activities by para-professionals and analysts may not be treated as zero.

(3) *Total labor hours*. Total labor hours means the total number of hours that a taxpayer's personnel spend on a taxpayer's trade or business during the taxable year. A taxpayer may make reasonable assumptions concerning total hours spent by personnel on the taxpayer's trade or business. For example, it may be reasonable, based on all the facts and circumstances, to assume that all full-time personnel spend 1,800 hours per year on a taxpayer's trade or business. If, under paragraph (d)(2) of this section, a taxpayer treats as zero the lobbying labor hours of personnel engaged in secretarial, clerical, support, and other administrative activities, the taxpayer must also treat as zero the total labor hours of all personnel engaged in those activities.

(4) *Total costs of operations*. A taxpayer's total costs of operations means the total costs of the taxpayer's trade or business for a taxable year,

excluding third-party costs (as defined in paragraph (d)(5) of this section).

(5) *Third-party costs.* Third-party costs are amounts paid or incurred in whole or in part for lobbying activities conducted by third parties (such as amounts paid to taxpayers subject to section 162(e)(5)(A) or dues or other similar amounts that are not deductible in whole or in part under section 162(e)(3)) and amounts paid or incurred for travel (including meals and lodging while away from home) and entertainment relating in whole or in part to lobbying activities.

(6) *Example.* The provisions of this paragraph (d) are illustrated by the following example.

Example. (i) In 1996, three full-time employees, A, B, and C, of Taxpayer W engage in both lobbying activities and nonlobbying activities. A spends 300 hours, B spends 1,700 hours, and C spends 1,000 hours on lobbying activities, for a total of 3,000 hours spent on lobbying activities for W. W reasonably assumes that each of its three employees spends 2,000 hours a year on W's business.

(ii) W's total costs of operations are $300,000. W has no third-party costs.

(iii) Under the ratio method, X allocates $150,000 to its lobbying activities for 1996, as follows:

$$\frac{\text{Lobbying labor hours}}{\text{Total labor hours}} \times \text{Total costs of operations} + \text{Allocable third-party costs} = \text{Costs allocable to lobbying activities}$$

$$\left[\frac{300+1{,}700+1{,}000}{6{,}000} \times \$300{,}000\right] + [0] = \$150{,}000.$$

(e) *Gross-up method*—(1) *In general.* Under the gross-up method described in this paragraph (e)(1), the taxpayer allocates to lobbying activities the sum of its third-party costs (as defined in paragraph (d)(5) of this section) allocable to lobbying activities and 175 percent of its basic lobbying labor costs (as defined in paragraph (e)(3) of this section) of all personnel.

(2) *Alternative gross-up method.* Under the alternative gross-up method described in this paragraph (e)(2), the taxpayer allocates to lobbying activities the sum of its third-party costs (as defined in paragraph (d)(5) of this section) allocable to lobbying activities and 225 percent of its basic lobbying labor costs (as defined in paragraph (e)(3)), excluding the costs of personnel who engage in secretarial, clerical, support, and other administrative activities (as opposed to activities involving significant judgment with respect to lobbying activities).

(3) *Basic lobbying labor costs.* For purposes of this paragraph (e), basic lobbying labor costs are the basic costs of lobbying labor hours (as defined in paragraph (d)(2) of this section) determined for the appropriate personnel. For purposes of this paragraph (e), basic costs of lobbying labor hours are wages or other similar costs of labor, including, for example, guaranteed payments for services. Basic costs do not include pension, profit-sharing, employee benefits, and supplemental unemployment benefit plan costs, or other similar costs.

(4) *Example.* The provisions of this paragraph (e) are illustrated by the following example.

Example. (i) In 1996, three employees, A, B, and C, of Taxpayer X engage in both lobbying activities and nonlobbying activities. A spends 300 hours, B spends 1,700 hours, and C spends 1,000 hours on lobbying activities.

(ii) X has no third-party costs.

(iii) For purposes of the gross-up method, X determines that its basic labor costs are $20 per hour for A, $30 per hour for B, and $25 per hour for C. Thus, its basic lobbying labor costs are ($20×300)+($30×1,700)+($25×1,000), or ($6,000+$51,000+$25,000), for total basic lobbying labor costs for 1996 of $82,000.

(iv) Under the gross-up method, X allocates $143,500 to its lobbying activities for 1996, as follows:

$$175\% \times \text{Basic lobbying labor costs of all personnel} + \text{Allocable third-party costs} = \text{Costs allocable to lobbying activities}$$

$$[175\% \times \$82{,}000] + [0] = \$143{,}500.$$

(f) *Section 263A cost allocation methods*—(1) *In general.* A taxpayer may allocate its costs to lobbying activities under the principles set forth in section 263A and the regulations thereunder, except to the extent inconsistent with paragraph (g) of this section. For this purpose, lobbying activities are considered a service department or function. Therefore, a taxpayer may allocate costs to lobbying activities by applying the methods provided in §§ 1.263A–1 through 1.263A–3. See § 1.263A–1(e)(4), which describes service costs generally; § 1.263A–1(f), which sets forth cost allocation methods available under section 263A; and § 1.263A–1(g)(4), which provides methods of allocating service costs.

(2) *Example.* The provisions of this paragraph (f) are illustrated by the following example.

Example. (i) Three full-time employees, A, B, and C, work in the Washington office of Taxpayer Y, a manufacturing concern. They each engage in lobbying activities and nonlobbying activities. In 1996, A spends 75 hours, B spends 1,750 hours, and C spends 2,000 hours on lobbying activities. A's hours are not spent on direct contact lobbying as defined in paragraph (g)(2) of this section. All three work 2,000 hours during 1996. The Washington office also employs one secretary, D, who works exclusively for A, B, and C.

(ii) In addition, three departments in the corporate headquarters in Chicago benefit the Washington office: Public affairs, human resources, and insurance.

(iii) Y is subject to section 263A and uses the step-allocation method to allocate its service costs. Prior to the amendments to section 162(e), the Washington office was treated as an overall management function for purposes of section 263A. As such, its costs were fully deductible and no further allocations were made under Y's step allocation. Following the amendments to section 162(e), Y adopts its 263A step-allocation methodology to allocate costs to lobbying activities. Y adds a lobbying department to its step-allocation program, which results in an allocation of costs to the lobbying department from both the Washington office and the Chicago office.

(iv) Y develops a labor ratio to allocate its Washington office costs between the newly defined lobbying department and the overall management department. To determine the

hours allocable to lobbying activities, Y uses the de minimis rule of paragraph (g)(1) of this section. Under this rule, A's hours spent on lobbying activities are treated as zero because less than 5 percent of A's time is spent on lobbying (75/2,000=3.75%). In addition, because D works exclusively for personnel engaged in lobbying activities, D's hours are not used to develop the allocation ratio. Y assumes that D's allocation of time follows the average time of all the personnel engaged in lobbying activities. Thus, Y's labor ratio is determined as follows:

Employee	Departments		
	Lobbying hours	Overall management hours	Total hours
A	0	2,000	2,000
B	1,750	250	2,000
C	2,000	0	2,000
Totals	3,750	2,250	6,000

$$\text{Lobbying Department Ratio} = \frac{3{,}750}{6{,}000} = 62.5\%$$

$$\text{Overall Management Department Ratio} = \frac{2{,}250}{6{,}000} = 37.5\%$$

(v) In 1996, the Washington office has the following costs:

Account	Amount
Professional Salaries and Benefits	$660,000
Clerical Salaries and Benefits	50,000
Rent Expense	100,000
Depreciation on Furniture and Equip	40,000
Utilities	15,000
Outside Payroll Service	5,000
Miscellaneous	10,000
Third-Party Lobbying (Law Firm)	90,000
Total Washington Costs	$970,000

(vi) In addition, $233,800 of costs from the public affairs department, $30,000 of costs from the insurance department, and $5,000 of costs from the human resources department are allocable to the Washington office from departments in Chicago. Therefore, the Washington office costs are allocated to the Lobbying and Overall Management departments as follows:

Total Washington department costs from above	$970,000
Plus Costs Allocated From Other Departments	268,800
Less third-party costs directly allocable to lobbying	(90,000)
Total Washington office costs	1,148,800

	Lobbying department	Overall management department
Department Allocation Ratios	62.5%	37.5%
× Washington Office Costs	$1,148,800	$1,148,800
= Costs Allocated To Departments	$718,000	$430,800

(vii) Y's step-allocation for its Lobbying Department is determined as follows:

Y's step-allocation	Lobbying department
Washington costs allocated to lobbying department	$718,000
Plus third-party costs	90,000
Total costs of lobbying activities	808,000

(g) *Special rules.* The following rules apply to any reasonable method of allocating costs to lobbying activities.

(1) *De minimis rule for labor hours.* Subject to the exception provided in paragraph (g)(2) of this section, a taxpayer may treat time spent by an individual on lobbying activities as zero if less than five percent of the person's time is spent on lobbying activities. Reasonable methods must be used to determine if less than five percent of a person's time is spent on lobbying activities.

(2) *Direct contact lobbying labor hours.* Notwithstanding paragraph (g)(1) of this section, a taxpayer must treat all hours spent by a person on direct contact lobbying (as well as the hours that person spends in connection with direct contact lobbying, including time spent traveling that is allocable to the direct contact lobbying) as labor hours allocable to lobbying activities. An activity is direct contact lobbying if it is a meeting, telephone conversation, letter, or other similar means of communication with a legislator (other than a local legislator) or covered executive branch official (as defined in section 162(e)(6)) and otherwise qualifies as a lobbying activity. A person who engages in research, preparation, and other background activities related to direct contact lobbying but who does not make direct contact with a legislator or covered executive branch official is not engaged in direct contact lobbying.

(3) *Taxpayer defined.* For purposes of this section, a taxpayer includes a tax-exempt organization subject to section 6033(e).

(h) *Effective date.* This section is effective for amounts paid or incurred on or after July 21, 1995. Taxpayers must adopt a reasonable interpretation of sections 162(e)(1)(A) and (D) for amounts paid or incurred before this date.

Par. 5. Section 1.162–29 is added to read as follows:

§ 1.162–29 Influencing legislation.

(a) *Scope.* This section provides rules for determining whether an activity is influencing legislation for purposes of section 162(e)(1)(A). This section does not apply for purposes of sections 4911 and 4945 and the regulations thereunder.

(b) *Definitions.* For purposes of this section—

(1) *Influencing legislation.* Influencing legislation means—

(i) Any attempt to influence any legislation through a lobbying communication; and

(ii) All activities, such as research, preparation, planning, and coordination, including deciding whether to make a lobbying communication, engaged in for a purpose of making or supporting a lobbying communication, even if not yet made. See paragraph (c) of this section for rules for determining the purposes for engaging in an activity.

(2) *Attempt to influence legislation.* An attempt to influence any legislation

through a lobbying communication is making the lobbying communication.

(3) *Lobbying communication.* A lobbying communication is any communication (other than any communication compelled by subpoena, or otherwise compelled by Federal or State law) with any member or employee of a legislative body or any other government official or employee who may participate in the formulation of the legislation that—

(i) Refers to specific legislation and reflects a view on that legislation; or

(ii) Clarifies, amplifies, modifies, or provides support for views reflected in a prior lobbying communication.

(4) *Legislation.* Legislation includes any action with respect to Acts, bills, resolutions, or other similar items by a legislative body. Legislation includes a proposed treaty required to be submitted by the President to the Senate for its advice and consent from the time the President's representative begins to negotiate its position with the prospective parties to the proposed treaty.

(5) *Specific legislation.* Specific legislation includes a specific legislative proposal that has not been introduced in a legislative body.

(6) *Legislative bodies.* Legislative bodies are Congress, state legislatures, and other similar governing bodies, excluding local councils (and similar governing bodies), and executive, judicial, or administrative bodies. For this purpose, administrative bodies include school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive.

(7) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples.

Example 1. Taxpayer P's employee, A, is assigned to approach members of Congress to gain their support for a pending bill. A drafts and P prints a position letter on the bill. P distributes the letter to members of Congress. Additionally, A personally contacts several members of Congress or their staffs to seek support for P's position on the bill. The letter and the personal contacts are lobbying communications. Therefore, P is influencing legislation.

Example 2. Taxpayer R is invited to provide testimony at a congressional oversight hearing concerning the implementation of The Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Specifically, the hearing concerns a proposed regulation increasing the threshold value of commercial and residential real estate transactions for which an appraisal by a state licensed or certified appraiser is required. In its testimony, R states that it is in favor of the proposed regulation. Because R does not refer to any specific legislation or reflect a view on any such legislation, R has not made a lobbying communication. Therefore, R is not influencing legislation.

Example 3. State X enacts a statute that requires the licensing of all day-care providers. Agency B in State X is charged with writing rules to implement the statute. After the enactment of the statute, Taxpayer S sends a letter to Agency B providing detailed proposed rules that S recommends Agency B adopt to implement the statute on licensing of day-care providers. Because the letter to Agency B neither refers to nor reflects a view on any specific legislation, it is not a lobbying communication. Therefore, S is not influencing legislation.

Example 4. Taxpayer T proposes to a State Park Authority that it purchase a particular tract of land for a new park. Even if T's proposal would necessarily require the State Park Authority eventually to seek appropriations to acquire the land and develop the new park, T has not made a lobbying communication because there has been no reference to, nor any view reflected on, any specific legislation. Therefore, T's proposal is not influencing legislation.

Example 5. (i) Taxpayer U prepares a paper that asserts that lack of new capital is hurting State X's economy. The paper indicates that State X residents either should invest more in local businesses or increase their savings so that funds will be available to others interested in making investments. U forwards a summary of the unpublished paper to legislators in State X with a cover letter that states in part:

You must take action to improve the availability of new capital in the state.

(ii) Because neither the summary nor the cover letter refers to any specific legislative proposal and no other facts or circumstances indicate that they refer to an existing legislative proposal, forwarding the summary to legislators in State X is not a lobbying communication. Therefore, U is not influencing legislation.

(iii) Q, a member of the legislature of State X, calls U to request a copy of the unpublished paper from which the summary was prepared. U forwards the paper with a cover letter that simply refers to the enclosed materials. Because U's letter to Q and the unpublished paper do not refer to any specific legislation or reflect a view on any such legislation, the letter is not a lobbying communication. Therefore, U is not influencing legislation.

Example 6. (i) Taxpayer V prepares a paper that asserts that lack of new capital is hurting the national economy. The paper indicates that lowering the capital gains rate would increase the availability of capital and increase tax receipts from the capital gains tax. V forwards the paper to its representatives in Congress with a cover letter that says, in part:

I urge you to support a reduction in the capital gains tax rate.

(ii) V's communication is a lobbying communication because it refers to and reflects a view on a specific legislative proposal (i.e., lowering the capital gains rate). Therefore, V is influencing legislation.

Example 7. Taxpayer W, based in State A, notes in a letter to a legislator of State A that State X has passed a bill that accomplishes a stated purpose and then says that State A should pass such a bill. No such bill has been introduced into the State A legislature. The communication is a lobbying communication because it refers to and reflects a view on a specific legislative proposal. Therefore, W is influencing legislation.

Example 8. (i) Taxpayer Y represents citrus fruit growers. Y writes a letter to a United States senator discussing how pesticide O has benefited citrus fruit growers and disputing problems linked to its use. The letter discusses a bill pending in Congress and states in part:

This bill would prohibit the use of pesticide O. If citrus growers are unable to use this pesticide, their crop yields will be severely reduced, leading to higher prices for consumers and lower profits, even bankruptcy, for growers.

(ii) Y's views on the bill are reflected in this statement. Thus, the communication is a lobbying communication, and Y is influencing legislation.

Example 9. (i) B, the president of Taxpayer Z, an insurance company, meets with Q, who chairs the X state legislature's committee with jurisdiction over laws regulating insurance companies, to discuss the possibility of legislation to address current problems with surplus-line companies. B recommends that legislation be introduced that would create minimum capital and surplus requirements for surplus-line companies and create clearer guidelines concerning the risks that surplus-line companies can insure. B's discussion with Q is a lobbying communication because B refers to and reflects a view on a specific legislative proposal. Therefore, Z is influencing legislation.

(ii) Q is not convinced that the market for surplus-line companies is substantial enough to warrant such legislation and requests that B provide information on the amount and types of risks covered by surplus-line companies. After the meeting, B has employees of Z prepare estimates of the percentage of property and casualty insurance risks handled by surplus-line companies. B sends the estimates with a cover letter that simply refers to the enclosed materials. Although B's follow-up letter to Q does not refer to specific legislation or reflect a view on such legislation, B's letter supports the views reflected in the earlier communication. Therefore, the letter is a lobbying communication and Z is influencing legislation.

(c) *Purpose for engaging in an activity*—(1) *In general.* The purposes for engaging in an activity are determined based on all the facts and circumstances. Facts and circumstances include, but are not limited to—

(i) Whether the activity and the lobbying communication are proximate in time;

(ii) Whether the activity and the lobbying communication relate to similar subject matter;

(iii) Whether the activity is performed at the request of, under the direction of,

or on behalf of a person making the lobbying communication;

(iv) Whether the results of the activity are also used for a nonlobbying purpose; and

(v) Whether, at the time the taxpayer engages in the activity, there is specific legislation to which the activity relates.

(2) *Multiple purposes.* If a taxpayer engages in an activity both for the purpose of making or supporting a lobbying communication and for some nonlobbying purpose, the taxpayer must treat the activity as engaged in partially for a lobbying purpose and partially for a nonlobbying purpose. This division of the activity must result in a reasonable allocation of costs to influencing legislation. See § 1.162–28 (allocation rules for certain expenditures to which section 162(e)(1) applies). A taxpayer's treatment of these multiple-purpose activities will, in general, not result in a reasonable allocation if it allocates to influencing legislation—

(i) Only the incremental amount of costs that would not have been incurred but for the lobbying purpose; or

(ii) An amount based solely on the number of purposes for engaging in that activity without regard to the relative importance of those purposes.

(3) *Activities treated as having no purpose to influence legislation.* A taxpayer that engages in any of the following activities is treated as having done so without a purpose of making or supporting a lobbying communication—

(i) Before evidencing a purpose to influence any specific legislation referred to in paragraph (c)(3)(i)(A) or (B) of this section (or similar legislation)—

(A) Determining the existence or procedural status of specific legislation, or the time, place, and subject of any hearing to be held by a legislative body with respect to specific legislation; or

(B) Preparing routine, brief summaries of the provisions of specific legislation;

(ii) Performing an activity for purposes of complying with the requirements of any law (for example, satisfying state or federal securities law filing requirements);

(iii) Reading any publications available to the general public or viewing or listening to other mass media communications; and

(iv) Merely attending a widely attended speech.

(4) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples.

Example 1. (i) *Facts.* In 1997, Agency F issues proposed regulations relating to the business of Taxpayer W. There is no specific legislation during 1997 that is similar to the regulatory proposal. W undertakes a study of the impact of the proposed regulations on its business. W incorporates the results of that study in comments sent to Agency F in 1997. In 1998, legislation is introduced in Congress that is similar to the regulatory proposal. Also in 1998, W writes a letter to Senator P stating that it opposes the proposed legislation. W encloses with the letter a copy of the comments it sent to Agency F.

(ii) *Analysis.* W's letter to Senator P refers to and reflects a view on specific legislation and therefore is a lobbying communication. Although W's study of the impact of the proposed regulations is proximate in time and similar in subject matter to its lobbying communication, W performed the study and incorporated the results in comments sent to Agency F when no legislation with a similar subject matter was pending (a nonlobbying use). On these facts, W engaged in the study solely for a nonlobbying purpose.

Example 2. (i) *Facts.* The governor of State Q proposes a budget that includes a proposed sales tax on electricity. Using its records of electricity consumption, Taxpayer Y estimates the additional costs that the budget proposal would impose upon its business. In the same year, Y writes to members of the state legislature and explains that it opposes the proposed sales tax. In its letter, Y includes its estimate of the costs that the sales tax would impose on its business. Y does not demonstrate any other use of its estimates.

(ii) *Analysis.* The letter is a lobbying communication (because it refers to and reflects a view on specific legislation, the governor's proposed budget). Y's estimate of additional costs under the proposal supports the lobbying communication, is proximate in time and similar in subject matter to a specific legislative proposal then in existence, and is not used for a nonlobbying purpose. Based on these facts, Y estimated its additional costs under the budget proposal solely to support the lobbying communication.

Example 3. (i) *Facts.* A senator in the State Q legislature announces her intention to introduce legislation to require health insurers to cover a particular medical procedure in all policies sold in the state. Taxpayer Y has different policies for two groups of employees, one of which covers the procedure and one of which does not. After the bill is introduced, Y's legislative affairs staff asks Y's human resources staff to estimate the additional cost to cover the procedure for both groups of employees. Y's human resources staff prepares a study estimating Y's increased costs and forwards it to the legislative affairs staff. Y's legislative staff then writes to members of the state legislature and explains that it opposes the proposed change in insurance coverage based on the study. Y's legislative affairs staff thereafter forwards the study, prepared for its use in opposing the statutory proposal, to its labor relations staff for use in negotiations with employees scheduled to begin later in the year.

(ii) *Analysis.* The letter to legislators is a lobbying communication (because it refers to and reflects a view on specific legislation). The activity of estimating Y's additional costs under the proposed legislation relate to the same subject as the lobbying communication, occurs close in time to the lobbying communication, is conducted at the request of a person making a lobbying communication, and relates to specific legislation then in existence. Although Y used the study in its labor negotiations, mere use for that purpose does not establish that Y estimated its additional costs under the proposed legislation in part for a nonlobbying purpose. Thus, based on all the facts and circumstances, Y estimated the additional costs it would incur under the proposal solely to make or support the lobbying communication.

Example 4. (i) *Facts.* After several years of developmental work under various contracts, in 1996, Taxpayer A contracts with the Department of Defense (DOD) to produce a prototype of a new generation military aircraft. A is aware that DOD will be able to fund the contract only if Congress appropriates an amount for that purpose in the upcoming appropriations process. In 1997, A conducts simulation tests of the aircraft and revises the specifications of the aircraft's expected performance capabilities, as required under the contract. A submits the results of the tests and the revised specifications to DOD. In 1998, Congress considers legislation to appropriate funds for the contract. In that connection, A summarizes the results of the simulation tests and of the aircraft's expected performance capabilities, and submits the summary to interested members of Congress with a cover letter that encourages them to support appropriations of funds for the contract.

(ii) *Analysis.* The letter is a lobbying communication (because it refers to specific legislation (i.e., appropriations) and requests passage). The described activities in 1996, 1997, and 1998 relate to the same subject as the lobbying communication. The summary was prepared specifically for, and close in time to, that communication. Based on these facts, the summary was prepared solely for a lobbying purpose. In contrast, A conducted the tests and revised the specifications to comply with its production contract with DOD. A conducted the tests and revised the specifications solely for a nonlobbying purpose.

Example 5. (i) *Facts.* C, president of Taxpayer W, travels to the state capital to attend a two-day conference on new manufacturing processes. C plans to spend a third day in the capital meeting with state legislators to explain why W opposes a pending bill unrelated to the subject of the conference. At the meetings with the legislators, C makes lobbying communications by referring to and reflecting a view on the pending bill.

(ii) *Analysis.* C's traveling expenses (transportation and meals and lodging) are partially for the purpose of making or supporting the lobbying communications and partially for a nonlobbying purpose. As a result, under paragraph (c)(2) of this section, W must reasonably allocate C's traveling expenses between these two purposes. Allocating to influencing legislation only C's incremental transportation expenses (i.e., the taxi fare to meet with the state legislators) does not result in a reasonable allocation of traveling expenses.

Example 6. (i) *Facts.* On February 1, 1997, a bill is introduced in Congress that would affect Company E. Employees in E's legislative affairs department, as is customary, prepare a brief summary of the bill and periodically confirm the procedural status of the bill through conversations with employees and members of Congress. On March 31, 1997, the head of E's legislative affairs department meets with E's President to request that B, a chemist, temporarily help the legislative affairs department analyze the bill. The President agrees, and suggests that B also be assigned to draft a position letter in opposition to the bill. Employees of the legislative affairs department continue to confirm periodically the procedural status of the bill. On October 31, 1997, B's position letter in opposition to the bill is delivered to members of Congress.

(ii) *Analysis.* B's letter is a lobbying communication because it refers to and reflects a view on specific legislation. Under paragraph (c)(3)(i) of this section, the assignment of B to assist the legislative affairs department in analyzing the bill and in drafting a position letter in opposition to the bill evidences a purpose to influence legislation. Neither the activity of periodically confirming the procedural status of the bill nor the activity of preparing the routine, brief summary of the bill before March 31 constitutes influencing legislation. In contrast, periodically confirming the procedural status of the bill on or after March 31 relates to the same subject as, and is close in time to, the lobbying communication and is used for no nonlobbying purpose. Consequently, after March 31, E determined the procedural status of the bill for the purpose of supporting the lobbying communication by B.

(d) *Lobbying communication made by another.* If a taxpayer engages in activities for a purpose of supporting a lobbying communication to be made by another person (or by a group of persons), the taxpayer's activities are treated under paragraph (b) of this section as influencing legislation. For example, if a taxpayer or an employee of the taxpayer (as a volunteer or otherwise) engages in an activity to assist a trade association in preparing its lobbying communication, the taxpayer's activities are influencing legislation even if the lobbying communication is made by the trade association and not the taxpayer. If, however, the taxpayer's employee, acting outside the employee's scope of employment, volunteers to engage in those activities, then the taxpayer is not influencing legislation.

(e) *No lobbying communication.* Paragraph (e) of this section applies if a taxpayer engages in an activity for a purpose of making or supporting a lobbying communication, but no lobbying communication that the activity supports has yet been made.

(1) *Before the filing date.* Under this paragraph (e)(1), if on the filing date of the return for any taxable year the taxpayer no longer expects, under any reasonably foreseeable circumstances, that a lobbying communication will be made that is supported by the activity, then the taxpayer will be treated as if it did not engage in the activity for a purpose of making or supporting a lobbying communication. Thus, the taxpayer need not treat any amount allocated to that activity for that year under § 1.162–28 as an amount to which section 162(e)(1)(A) applies. The filing date for purposes of paragraph (e) of this section is the earlier of the time the taxpayer files its timely return for the year or the due date of the timely return.

(2) *After the filing date*—(i) *In general.* If, at any time after the filing date, the taxpayer no longer expects, under any reasonably foreseeable circumstances, that a lobbying communication will be made that is supported by the activity, then any amount previously allocated under § 1.162–28 to the activity and disallowed under section 162(e)(1)(A) is treated as an amount that is not subject to section 162(e)(1)(A) and that is paid or incurred only at the time the taxpayer no longer expects that a lobbying communication will be made.

(ii) *Special rule for certain tax-exempt organizations.* For a tax-exempt organization subject to section 6033(e), the amounts described in paragraph (e)(2)(i) of this section are treated as reducing (but not below zero) its expenditures to which section 162(e)(1) applies beginning with that year and continuing for subsequent years to the extent not treated in prior years as reducing those expenditures.

(f) *Anti-avoidance rule.* If a taxpayer, alone or with others, structures its activities with a principal purpose of achieving results that are unreasonable in light of the purposes of section 162(e)(1)(A) and section 6033(e), the Commissioner can recast the taxpayer's activities for federal tax purposes as appropriate to achieve tax results that are consistent with the intent of section 162(e)(1)(A), section 6033(e) (if applicable), and this section, and the pertinent facts and circumstances.

(g) *Taxpayer defined.* For purposes of this section, a taxpayer includes a tax-exempt organization subject to section 6033(e).

(h) *Effective date.* This section is effective for amounts paid or incurred on or after July 21, 1995. Taxpayers must adopt a reasonable interpretation of section 162(e)(1)(A) for amounts paid or incurred before this date.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 29, 1995

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–17913 Filed 7–20–95; 8:45 am]

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26 CFR Parts 1, 18 and 602

[TD 8600]

RIN 1545–AE86

Definition of an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the definition of an *S corporation* under section 1361 of the Internal Revenue Code of 1986. Changes to the applicable tax law were made by the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Omnibus Budget Reconciliation Act of 1989. The final regulations provide guidance on the requirements to be an S corporation.

EFFECTIVE DATE: These regulations are effective July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Laura Howell, telephone 202–622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0731. The estimated annual burden per respondent varies from 30 minutes to 60 minutes, depending on individual circumstances, with an estimated average of 45 minutes.

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

Background

On October 7, 1986, the IRS published in the **Federal Register** a notice of proposed rulemaking containing proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1361 of the Internal Revenue Code (Code). These amendments were proposed to conform the regulations to sections 2 and 6 of the Subchapter S Revision Act of 1982 and to section 721(c) and (f) of the Tax Reform Act of 1984. After consideration of all comments received by Treasury and the IRS regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. The final regulations also reflect the amendments made to section 1361 by sections 901(d)(4)(G) and 1879(m) of the Tax Reform Act of 1986, section 1018(q)(2) of the Technical and Miscellaneous Revenue Act of 1988, and section 7811(c)(6) of the Omnibus Budget Reconciliation Act of 1989.

On January 26, 1983, the IRS published temporary regulation § 18.1361–1 under section 1361(d)(2) of the Internal Revenue Code of 1954 (TD 7872) in the **Federal Register** to provide guidance as to the election to treat a qualified subchapter S trust as a wholly-owned grantor trust. The temporary regulations are adopted as revised by this Treasury decision, and § 18.1361–1 of the temporary regulations is removed.

Explanation of Provisions

The proposed regulations define a domestic corporation as a corporation as defined in section 7701(a)(2) created or organized in the United States or under the law of the United States or any state or territory. Commentators recommended that this definition be clarified to provide that an association, unincorporated but taxable as a corporation, may elect to be treated as an S corporation. The final regulations revise the definition of a domestic corporation for purposes of the S corporation provisions by providing that an entity that is classified as an association taxable as a corporation under § 301.7701–2 of the Procedure and Administration Regulations may elect to be treated as an S corporation provided it meets the other requirements of a small business corporation.

Section 1361(b)(2)(C) provides that an insurance company subject to tax under subchapter L may not elect to be treated as an S corporation. However, the Subchapter S Revision Act of 1982 (the Act) provided a grandfather rule for a qualified casualty insurance electing small business corporation. The proposed regulations provide the grandfather rules for a qualified casualty insurance electing small business corporation. Additionally, the Act provided a grandfather rule with regard to the affiliation rule under section 1361(b)(2)(A) for a corporation that is affiliated with a foreign corporation or DISC. The final regulations remove the grandfather rules for a qualified casualty insurance electing small business corporation since they are no longer generally applicable. However, corporations that fit within those grandfather rules and certain corporations having oil and gas production should refer to section 6(c) of Public Law 97–354 for appropriate guidance.

The proposed regulations provide a special rule for a corporation having a shareholder who has a legal life estate or usufruct interest in the stock. The proposed regulations provide requirements for such shareholder to qualify as an eligible shareholder. Upon further consideration by the IRS and Treasury, the final regulations remove this special rule from the proposed regulations. The issue will be addressed in other published guidance.

The proposed regulations provide that persons for whom stock of a corporation is held by a nominee, guardian, custodian, or agent are generally considered to be shareholders of the corporation, but if stock is owned by a partnership, the partnership (and not its partners) is considered to be the shareholder and the corporation does not qualify as a small business corporation. Commentators questioned why stock which is held by a partnership as nominee for an individual should not be considered to be owned by the individual rather than the partnership for purposes of determining whether a corporation qualifies as an S corporation. Commentators suggested that this point be clarified. The final regulations adopt this suggestion by providing that a partnership may hold S corporation stock as a nominee for a person who will be treated as the shareholder.

The proposed regulations contain a rule that prohibits a nonresident alien from being an eligible S corporation shareholder. Commentators recommended an additional rule that would warn that a U.S. citizen married to a nonresident alien who, under applicable local law, has an interest in the U.S. citizen's stock could not be a shareholder of an S corporation. The final regulations provide that, if a U.S. shareholder's nonresident alien spouse has a current ownership interest in the shareholder's stock under applicable local law, the S corporation has an ineligible shareholder and therefore does not qualify as a small business corporation. For example, the laws of a nonresident alien spouse's country may give the nonresident alien spouse a community property interest in the U.S. spouse's property. In that case, the corporation would not constitute a small business corporation as of the date the nonresident spouse acquired an interest in the stock of the corporation, and the corporation's S election would terminate. See *Ward* v. *United States,* 661 F.2d 226 (Ct. Cl. 1981). If the termination is inadvertent, relief may be available under section 1362(f) of the Code.

The final regulations add and reserve § 1.1361–1(g)(2) addressing the status of dual residents. When the proposed regulations under § 301.7701(b)–7(a)(4) (published in the **Federal Register** (26 CFR 518) on April 27, 1992) are finalized, this section will contain a cross reference to those final regulations.

For purposes of section 1361(c)(2)(A)(i), the proposed regulations define a subpart E trust as a trust all of which (income and corpus) is treated (under subpart E, part I, subchapter J, chapter 1 of the Code) as owned by one individual (whether or not the grantor) who is a citizen or resident of the United States. Commentators expressed concern regarding the definition of a subpart E trust and suggested that for purposes of determining whether a trust meets the subpart E requirements under section 1361(c)(2)(A)(i), the relevant period for making that determination is the period during which the trust holds S corporation stock. The final regulations adopt the commentators' suggestion. Therefore, whether the trust is a wholly-owned trust during any period in which the trust does not hold S corporation stock is not relevant. In addition, the final regulations define a subpart E trust as a trust all of which is treated as owned by an individual. This definition tracks the language of section 1361(c)(2)(A)(i). Therefore, the trust is a permitted shareholder if the grantor or another person includes in computing taxable income and credits all of the trust's items of income, deductions, and credits against tax under the rules in § 1.671–3.

The final regulations clarify that a voting trust is a permitted shareholder only if it is a subpart E trust. Further, the final regulations add rules concerning who is treated as the shareholder for purposes of sections 1366, 1367, and 1368 when certain permitted trusts hold stock of an S

corporation. For example, when stock of an S corporation is held by a trust that ceases to be a subpart E trust upon the death of the deemed owner, and the trust is a permitted shareholder for a 60-day period (or a 2-year period if applicable) under section 1361(c)(2)(A)(ii), the trust (and not the estate of the deemed owner) is treated as the shareholder for purposes of sections 1366, 1367, and 1368, even though the estate is treated as the shareholder for purposes of section 1361(b)(1).

The final regulations provide that if a husband and wife file a joint return, are both U.S. citizens or residents, and are both designated beneficiaries of a trust, they are treated as one beneficiary for purposes of meeting the requirements of a qualified subchapter S trust (QSST). In addition, the final regulations add a rule that if any distribution from the trust satisfies the grantor's legal obligation to support the income beneficiary, the trust ceases to be a QSST as of the date of the distribution because under section 677(b) the grantor would be treated either as the owner of the ordinary income portion of the trust or as a beneficiary of the trust under section 662 and § 1.662(a)–4.

The proposed regulations provide the general rule that would deny a trust qualification as a QSST if the terms of the trust do not preclude the possibility that in the future the trust may not meet the requirements of section 1361(d)(3)(A). Commentators suggested that the general rule be deleted because it should be sufficient if a trust currently complies with those requirements. For example, it was suggested that if the income beneficiary has a lifetime special power to appoint the income and corpus of the trust to another person, the trust would qualify as a QSST until the power is exercised. The final regulations do not adopt this suggestion because the statute clearly requires that the terms of the trust instrument provide that, during the life of the current income beneficiary, there be only one income beneficiary, and that any corpus distributed may be distributed only to such beneficiary. The statute generally precludes the possibility of future non-compliance. However, because of the concern expressed that a trust instrument could not feasibly preclude the addition to a trust of a beneficiary that is mandated by a court of law, the final regulations provide for this exception to the general rule.

Commentators requested guidance as to whether a qualified terminable interest property (QTIP) trust qualifies as a permitted shareholder of an S corporation. The final regulations provide that a trust treated as a QTIP trust under section 2056(b)(7) will qualify as a QSST, and a trust treated as a QTIP trust under section 2523(f) may qualify as a subpart E trust if wholly-owned by the grantor. In the latter case, the trust does not satisfy all of the QSST requirements because the grantor is treated as the owner of the income portion of the trust under sections 672(e) and 677.

Commentators also requested guidance as to whether an income beneficiary of a trust that meets the QSST requirements, and who is treated as the owner of all of the trust, or the portion of the trust that consists of S corporation stock under subpart E (and thus is a permitted shareholder under section 1361(c)(2)(A)(i)), may nevertheless make a protective QSST election. The final regulations add provisions for a protective QSST election for income beneficiaries of certain grantor trusts.

The final regulations also change the result in Rev. Rul. 92–84, 1992–2 C.B. 216. Rev. Rul. 92–84 holds that if a QSST sells its S corporation stock, the current income beneficiary and not the trust must recognize any gain or loss. After the publication of Rev. Rul. 92–84, practitioners expressed concern with respect to the sale of the stock by a QSST in an installment sale. Practitioners questioned whether the trust could effectively use the installment method under section 453 to report gain realized on the sale of the stock and expressed concern about how the IRS would treat an installment sale of S stock by a QSST. Practitioners suggested that since the income beneficiary was treated as the owner of the stock sold, the income beneficiary would be treated as the owner of the installment obligation received in exchange for the sale of the stock. However, concern was expressed that because the QSST ceases to be a QSST as to the S corporation stock that was sold, the income beneficiary would no longer be treated as the owner of the installment obligation held by the trust and there may have occurred a disposition of the installment obligation under section 453B(a).

On further consideration, the IRS and Treasury have determined that the income beneficiary of a QSST who is a section 678 deemed owner of the S corporation stock solely by reason of section 1361(d)(1) should not be treated as the owner of the consideration received by a QSST upon its disposition of S corporation stock. Under the final regulations, the consideration is treated as received by the trust in its status as a separate taxpayer under section 641. Thus, for example, any gain recognized on a sale of the S corporation stock is the gross income of the trust. Similarly, the trust may report any gain realized upon the sale under section 453 if the sale otherwise qualifies as an installment sale. This provision of the final regulations reflects an interpretation of section 1361(d)(1) and has no bearing upon the operation or effect of the principles of sections 671 through 679 beyond the context of a QSST.

If a QSST has sold or otherwise disposed of all or a portion of its S corporation stock in a tax year that is open under the statutes for both the QSST and the income beneficiary but before the effective date of these final regulations, the QSST and the income beneficiary may treat the transaction under Rev. Rul. 92- 84 or under these final regulations. However, the QSST and the income beneficiary must take consistent reporting positions. The final regulations require that the QSST and the income beneficiary must state on their respective returns that they are taking consistent reporting positions.

Effect on Other Documents

Rev. Rul. 92–84, 1992–2 C.B. 216 is obsolete as of July 21, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information: The principal author of these final regulations is Laura Howell, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 1 and 18

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 18 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Sections 1.1361–1(j) (6), (10) and (11) also issued under 26 U.S.C. 1361(d)(2)(B)(iii). * * *

Par. 2. Section 1.1361–0 is revised to read as follows:

§ 1.1361–0 Table of contents.

This section lists captions contained in § 1.1361–1.

§ 1.1361–1 S Corporation defined.

(a) In general.
(b) Small business corporation defined.
(1) In general.
(2) Estate in bankruptcy.
(3) Treatment of restricted stock.
(4) Treatment of deferred compensation plans.
(5) Treatment of straight debt.
(6) Effective date provisions.
(c) Domestic corporation.
(d) Ineligible corporation.
(1) General rule.
(2) Exceptions.
(3) Inactive corporation exception.
(e) Number of shareholders.
(1) General rule.
(2) Special rules relating to stock owned by husband and wife.
(f) Shareholder must be an individual or estate.
(g) No nonresident alien shareholder.
(1) General rule.
(2) Special rule for dual residents.
(h) Special rules relating to trusts.
(1) General rule.
(2) Foreign trust.
(3) Determination of shareholders.
(i) [Reserved]
(j) Qualified subchapter S trust.
(1) Definition.
(2) Special rules.
(3) Separate and independent shares of a trust.
(4) Qualified terminable interest property trust.
(5) Ceasing to meet the QSST requirements.
(6) Qualified subchapter S trust election.
(7) Treatment as shareholder.
(8) Coordination with grantor trust rules.
(9) Successive income beneficiary.
(10) Affirmative refusal to consent.
(11) Revocation of QSST election.
(k)(1) Examples.
(2) Effective date.
(l) Classes of stock.
(1) General rule.
(2) Determination of whether stock confers identical rights to distribution and liquidation proceeds.
(3) Stock taken into account.
(4) Other instruments, obligations, or arrangements treated as a second class of stock.
(5) Straight debt safe harbor.
(6) Inadvertent terminations.
(7) Effective date

Par. 3. Section 1.1361–1 is amended by adding paragraphs (a), and (c) through (k) to read as follows:

§ 1.1356-1 S corporation defined.

(a) *In general.* For purposes of this title, with respect to any taxable year—(1) The term *S corporation* means a small business corporation (as defined in paragraph (b) of this section) for which an election under section 1362(a) is in effect for that taxable year.

(2) The term *C corporation* means a corporation that is not an S corporation for that taxable year.

* * * * *

(c) *Domestic corporation.* For purposes of paragraph (b) of this section, the term *domestic corporation* means a domestic corporation as defined in § 301.7701–5 of this chapter, and the term *corporation* includes an entity that is classified as an association taxable as a corporation under § 301.7701–2 of this chapter.

(d) *Ineligible corporation*—(1) *General rule.* Except as otherwise provided in this paragraph (d), the term *ineligible corporation* means a corporation that is—

(i) A member of an affiliated group (determined under section 1504 without regard to any exception contained in section 1504(b)), whether or not that affiliated group has ever filed a consolidated return;

(ii) A financial institution to which section 585 applies (or would apply but for section 585(c)) or to which section 593 applies;

(iii) An insurance company subject to tax under subchapter L;

(iv) A corporation to which an election under section 936 applies; or

(v) A DISC or former DISC.

(2) *Exceptions.* See the special rules and exceptions provided in sections 6(c)(2), (3) and (4) of Public Law 97–354 that are applicable for certain casualty insurance companies and qualified oil corporations.

(3) *Inactive corporation exception.* (i) For purposes of paragraph (d)(1)(i) of this section, a corporation (parent corporation) will not be treated as a member of an affiliated group during any period within a taxable year by reason of the ownership of stock in another corporation (subsidiary corporation) if the subsidiary corporation—

(A) Has not begun business at any time on or before the close of that period; and

(B) Does not have gross income for that period.

(ii) The determination under paragraph (d)(3)(i) of this section of the date on which a subsidiary corporation begins business is made by taking into account all the facts and circumstances of the particular case. A corporation has not begun business, however, merely because it is in existence. Ordinarily, a corporation begins business when it starts the business operations for which it was organized. Mere organizational activities, such as the obtaining of the corporate charter, are not alone sufficient to constitute the beginning of business. An example of a corporation that has not begun business is a corporation incorporated for the sole purpose of reserving a corporate name in a state or states in which the parent corporation is not doing business. If the activities of a corporation have advanced to the extent necessary to establish the nature of its business operations, however, the corporation is deemed to have begun business. For example, a corporation that acquires operating assets necessary for the type of business contemplated may be deemed to have begun business.

(iii) If a subsidiary corporation ceases to be an inactive corporation as defined in paragraph (d)(3)(i) of this section, then the parent corporation's election under section 1362(a) will terminate on the earlier of the first day that the subsidiary corporation begins business, or the first day, determined under the subsidiary corporation's method of accounting, that the subsidiary corporation realizes gross income.

(iv) The application of paragraph (d)(3) of this section is illustrated by the following examples:

Example 1. In 1996, Corporation P, a C corporation, owns all of the stock of Corporation Q. P and Q both use the calendar year as their taxable year. For purposes of paragraph (d)(1)(i) of this section, P would not be considered at any time during 1996 to be a member of an affiliated group solely by reason of its ownership of Q's stock if Q has not begun business at any time on or before January 1, 1997, and has no gross income for calendar year 1996 or any prior calendar year. Thus, P could qualify as a small business corporation during 1996 if it meets the other requirements provided in section 1361(b). Assuming that P's ownership of Q stock remains unchanged, P would cease to be a small business corporation on the day that Q either begins business or realizes gross income (determined under Q's method of accounting), whichever day occurs earlier.

Example 2. Assume the same facts as in *Example 1,* except that Corporation Q had begun business prior to 1995, but became inactive in 1995. For purposes of paragraph (d)(1)(i) of this section, P is considered to be a member of an affiliated group because Q had begun business prior to becoming inactive in 1995. Therefore, even though Q was inactive in 1996, P is not eligible to make the S election until P liquidates Q.

(e) *Number of shareholders*—(1) *General rule.* A corporation does not

qualify as a small business corporation if it has more than 35 shareholders. Ordinarily, the person who would have to include in gross income dividends distributed with respect to the stock of the corporation (if the corporation were a C corporation) is considered to be the shareholder of the corporation. For example, if stock (owned other than by a husband and wife) is owned by tenants in common or joint tenants, each tenant in common or joint tenant is generally considered to be a shareholder of the corporation. (For special rules relating to stock owned by husband and wife, see paragraph (e)(2) of this section; for special rules relating to restricted stock, see paragraphs (b) (3) and (6) of this section.) The person for whom stock of a corporation is held by a nominee, guardian, custodian, or an agent is considered to be the shareholder of the corporation for purposes of this paragraph (e) and paragraphs (f) and (g) of this section. For example, a partnership may be a nominee of S corporation stock for a person who qualifies as a shareholder of an S corporation. However, if the partnership is the beneficial owner of the stock, then the partnership is the shareholder, and the corporation does not qualify as a small business corporation. In addition, in the case of stock held for a minor under a uniform gifts to minors or similar statute, the minor and not the custodian is the shareholder. For purposes of this paragraph (e) and paragraphs (f) and (g) of this section, if stock is held by a decedent's estate, the estate (and not the beneficiaries of the estate) is considered to be the shareholder; however, if stock is held by a subpart E trust (which includes voting trusts), the deemed owner is considered to be the shareholder.

(2) *Special rules relating to stock owned by husband and wife.* For purposes of paragraph (e)(1) of this section, stock owned by a husband and wife (or by either or both of their estates) is treated as if owned by one shareholder, regardless of the form in which they own the stock. For example, if husband and wife are owners of a subpart E trust, they will be treated as one individual. Both husband and wife must be U.S. citizens or residents, and a decedent spouse's estate must not be a foreign estate as defined in section 7701(a)(31). The treatment described in this paragraph (e)(2) will cease upon dissolution of the marriage for any reason other than death.

(f) *Shareholder must be an individual or estate.* Except as otherwise provided in paragraph (e)(1) (relating to nominees and paragraph (h) (relating to certain trusts) of this section, a corporation in which any shareholder is a corporation, partnership, or trust does not qualify as a small business corporation.

(g) *Nonresident alien shareholder*—(1) *General rule.* (i) A corporation having a shareholder who is a nonresident alien as defined in section 7701(b)(1)(B) does not qualify as a small business corporation. If a U.S. shareholder's spouse is a nonresident alien who has a current ownership interest (as opposed, for example, to a survivorship interest) in the stock of the corporation by reason of any applicable law, such as a state community property law or a foreign country's law, the corporation does not qualify as a small business corporation from the time the nonresident alien spouse acquires the interest in the stock. If a corporation's S election is inadvertently terminated as a result of a nonresident alien spouse being considered a shareholder, the corporation may request relief under section 1362(f).

(ii) The following examples illustrate this paragraph (g)(1)(i):

Example 1. In 1990, W, a U.S. citizen, married H, a citizen of a foreign country. At all times H is a nonresident alien under section 7701(b)(1)(B). Under the foreign country's law, all property acquired by a husband and wife during the existence of the marriage is community property and owned jointly by the husband and wife. In 1996 while residing in the foreign country, W formed X, a U.S. corporation, and X simultaneously filed an election to be an S corporation. X issued all of its outstanding stock in W's name. Under the foreign country's law, X's stock became the community property of and jointly owned by H and W. Thus, X does not meet the definition of a small business corporation and therefore could not file a valid S election because H, a nonresident alien, has a current interest in the stock.

Example 2. Assume the same facts as *Example 1*, except that in 1991, W and H filed a section 6013(g) election allowing them to file a joint U.S. tax return and causing H to be treated as a U.S. resident for purposes of chapters 1, 5, and 24 of the Internal Revenue Code. The section 6013(g) election applies to the taxable year for which made and to all subsequent taxable years until terminated. Because H is treated as a U.S. resident under section 6013(g), X does meet the definition of a small business corporation. Thus, the election filed by X to be an S corporation is valid.

(2) *Special rule for dual residents.* [Reserved]

(h) *Special rules relating to trusts*—(1) *General rule.* In general, a trust is not a permitted small business corporation shareholder. However, except as provided in paragraph (h)(2) of this section, the following trusts are permitted shareholders:

(i) *Qualified Subpart E trust.* A trust all of which is treated (under subpart E, part I, subchapter J, chapter 1) as owned by an individual (whether or not the grantor) who is a citizen or resident of the United States (a qualified subpart E trust). This requirement applies only during the period that the trust holds S corporation stock.

(ii) *Subpart E trust ceasing to be a qualified subpart E trust after the death of deemed owner.* A trust which was a qualified subpart E trust immediately before the death of the deemed owner and which continues in existence after the death of the deemed owner, but only for the 60-day period beginning on the day of the deemed owner's death. However, if a trust is described in the preceding sentence and the entire corpus of the trust is includible in the gross estate of the deemed owner, the trust is a permitted shareholder for the 2-year period beginning on the day of the deemed owner's death. A trust is considered to continue in existence if the trust continues to hold the stock of the S corporation during the period of administration of the decedent's estate or if, after the period of administration, the trust continues to hold the stock pursuant to the terms of the will or the trust agreement. See § 1.641(b)–3 for rules concerning the termination of estates and trusts for federal income tax purposes. If the trust consists of community property, and the decedent's community property interest in the trust is includible in the decedent's gross estate under chapter 11 (section 2001 and following, relating to estate tax), then the entire corpus of the trust will be deemed includible in the decedent's gross estate. Further, for the purpose of determining whether the entire corpus of the trust is includible in the gross estate of the deemed owner, if the decedent's spouse was treated as an owner of a portion of the trust under subpart E immediately before the decedent's death, the surviving spouse's portion is disregarded.

(iii) *Electing Qualified subchapter S trusts.* A qualified subchapter S trust (QSST) that has a section 1361(d)(2) election in effect (an electing QSST). See paragraph (j) of this section for rules concerning QSSTs including the manner for making the section 1361(d)(2) election.

(iv) *Testamentary trusts.* A trust (other than a qualified subpart E trust or an electing QSST) to which S corporation stock is transferred pursuant to the terms of a will, but only for the 60-day period beginning on the day the stock is transferred to the trust.

(v) *Qualified Voting trusts.* A trust created primarily to exercise the voting

power of S corporation stock transferred to it. To qualify as a voting trust for purposes of this section (a qualified voting trust), the beneficial owners must be treated as the owners of their respective portions of the trust under subpart E and the trust must have been created pursuant to a written trust agreement entered into by the shareholders, that—

(A) Delegates to one or more trustees the right to vote;

(B) Requires all distributions with respect to the stock of the corporation held by the trust to be paid to, or on behalf of, the beneficial owners of that stock;

(C) Requires title and possession of that stock to be delivered to those beneficial owners upon termination of the trust; and

(D) Terminates, under its terms or by state law, on or before a specific date or event.

(2) *Foreign trust.* For purposes of paragraph (h)(1) of this section, in any case where stock is held by a foreign trust as defined in section 7701(a)(31), the trust is considered to be the shareholder and is an ineligible shareholder. Thus, even if a foreign trust qualifies as a subpart E trust (e.g., a qualified voting trust), any corporation in which the trust holds stock does not qualify as a small business corporation.

(3) *Determination of shareholders*—(i) *General rule.* For purposes of paragraph (b) of this section (qualification as a small business corporation), and, except as provided in paragraph (h)(3)(ii) of this section, for purposes of sections 1366 (relating to the pass-through of items of income, loss, deduction, or credit), 1367 (relating to adjustments to basis of shareholder's stock), and 1368 (relating to distributions), the shareholder of S corporation stock held by a trust that is a permitted shareholder under paragraph (h)(1) of this section is determined as follows:

(A) If stock is held by a qualified subpart E trust, the deemed owner of the trust is treated as the shareholder.

(B) If stock is held by a trust defined in paragraph (h)(1)(ii) of this section, the estate of the deemed owner is generally treated as the shareholder as of the day of the deemed owner's death. However, if stock is held by such a trust in a community property state, the decedent's estate is the shareholder only of the portion of the trust included in the decedent's gross estate (and the surviving spouse continues to be the shareholder of the portion of the trust owned by that spouse under the applicable state's community property law).

The estate ordinarily will cease to be treated as the shareholder upon the earlier of the transfer of the stock by the trust or the expiration of the 60-day period (or, if applicable, the 2-year period) beginning on the day of the deemed owner's death. If the trust qualifies and becomes an electing QSST, the beneficiary and not the estate is treated as the shareholder as of the effective date of the QSST election, and the rules provided in paragraph (j)(7) of this section apply.

(C) If stock is held by an electing QSST, see paragraph (j)(7) of this section for the rules on who is treated as the shareholder.

(D) If stock is transferred to a testamentary trust (other than a qualified subpart E trust or an electing QSST), the estate of the testator is treated as the shareholder until the earlier of the transfer of that stock by the trust or the expiration of the 60-day period beginning on the day that the stock is transferred to the trust.

(E) If stock is held by a qualified voting trust, each beneficial owner of the stock, as determined under subpart E, is treated as a shareholder with respect to the owner's proportionate share of the stock held by the trust.

(ii) *Exceptions.* Solely for purposes of section 1366, 1367, and 1368 the shareholder of S corporation stock held by a trust is determined as follows—

(A) If stock is held by a trust (as defined in paragraph (h)(1)(ii) of this section) that does not qualify as a QSST, the trust is treated as the shareholder. If the trust continues to own the stock after the expiration of the 60-day period (or, if applicable, the 2-year period), the corporation's S election will terminate unless the trust is otherwise a permitted shareholder. If the trust is a QSST described in section 1361(d) and the income beneficiary of the trust makes a timely QSST election, the beneficiary and not the trust is treated as the shareholder from the effective date of the QSST election; and

(B) If stock is transferred to a testamentary trust described in paragraph (h)(1)(iii) of this section (other than a qualified subpart E trust or a trust that has a QSST election in effect), the trust is treated as the shareholder. If the trust continues to own the stock after the expiration of the 60-day period, the corporation's S election will terminate unless the trust otherwise qualifies as a permitted shareholder.

(i) [Reserved]

(j) *Qualified subchapter S trust*—(1) *Definition.* A qualified subchapter S trust (QSST) is a trust (whether intervivos or testamentary), other than a foreign trust described in section 7701(a)(31), that satisfies the following requirements:

(i) All of the income (within the meaning of § 1.643(b)–1) of the trust is distributed (or is required to be distributed) currently to one individual who is a citizen or resident of the United States. For purposes of the preceding sentence, unless otherwise provided under local law (including pertinent provisions of the governing instrument that are effective under local law), income of the trust includes distributions to the trust from the S corporation for the taxable year in question, but does not include the trust's pro rata share of the S corporation's items of income, loss, deduction, or credit determined under section 1366. See §§ 1.651(a)–2(a) and 1.663(b)–1(a) for rules relating to the determination of whether all of the income of a trust is distributed (or is required to be distributed) currently. If under the terms of the trust income is not required to be distributed currently, the trustee may elect under section 663(b) to consider a distribution made in the first 65 days of a taxable year as made on the last day of the preceding taxable year. See section 663(b) and § 1.663(b)–2 for rules on the time and manner for making the election. The income distribution requirement must be satisfied for the taxable year of the trust or for that part of the trust's taxable year during which it holds S corporation stock.

(ii) The terms of the trust must require that—

(A) During the life of the current income beneficiary, there will be only one income beneficiary of the trust;

(B) Any corpus distributed during the life of the current income beneficiary may be distributed only to that income beneficiary;

(C) The current income beneficiary's income interest in the trust will terminate on the earlier of that income beneficiary's death or the termination of the trust; and

(D) Upon termination of the trust during the life of the current income beneficiary, the trust will distribute all of its assets to that income beneficiary.

(iii) The terms of the trust must satisfy the requirements of paragraph (j)(1)(ii) of this section from the date the QSST election is made or from the effective date of the QSST election, whichever is earlier, throughout the entire period that the current income beneficiary and any successor income beneficiary is the income beneficiary of the trust. If the terms of the trust do not preclude the possibility that any of the requirements stated in paragraph (j)(1)(ii) of this

section will not be met, the trust will not qualify as a QSST. For example, if the terms of the trust are silent with respect to corpus distributions, and distributions of corpus to a person other than the current income beneficiary are permitted under local law during the life of the current income beneficiary, then the terms of the trust do not preclude the possibility that corpus may be distributed to a person other than the current income beneficiary and, therefore, the trust is not a QSST.

(2) *Special rules*—(i) If a husband and wife are income beneficiaries of the same trust, the husband and wife file a joint return, and each is a U.S. citizen or resident, the husband and wife are treated as one beneficiary for purposes of paragraph (j) of this section. If a husband and wife are treated by the preceding sentence as one beneficiary, any action required by this section to be taken by an income beneficiary requires joinder of both of them. For example, each spouse must sign the QSST election, continue to be a U.S. citizen or resident, and continue to file joint returns for the entire period that the QSST election is in effect.

(ii)(A) *Terms of the trust and applicable local law.* The determination of whether the terms of a trust meet all of the equirements under paragraph (j)(1)(ii) of this section depends upon the terms of the trust instrument and the applicable local law. For example, a trust whose governing instrument provides that A is the sole income beneficiary of the trust is, nevertheless, considered to have two income beneficiaries if, under the applicable local law, A and B are considered to be the income beneficiaries of the trust.

(B) *Legal obligation to support.* If under local law a distribution to the income beneficiary is in satisfaction of the grantor's legal obligation of support to that income beneficiary, the trust will not qualify as a QSST as of the date of distribution because, under section 677(b), if income is distributed, the grantor will be treated as the owner of the ordinary income portion of the trust or, if trust corpus is distributed, the grantor will be treated as a beneficiary under section 662. See § 1.677(b)–1 for rules on the treatment of trusts for support and § 1.662(a)–4 for rules concerning amounts used in discharge of a legal obligation.

(C) *Example.* The following example illustrates the rules of paragraph (j)(2)(ii)(B) of this section:

Example. F creates a trust for the benefit of F's minor child, G. Under the terms of the trust, all income is payable to G until the trust terminates on the earlier of G's attaining age 35 or G's death. Upon the termination of the trust, all corpus must be distributed to G or G's estate. The trust includes all of the provisions prescribed by section 1361(d)(3)(A) and paragraph (j)(1)(ii) of this section, but does not preclude the trustee from making income distributions to G that will be in satisfaction of F's legal obligation to support G. Under the applicable local law, distributions of trust income to G will satisfy F's legal obligation to support G. If the trustee distributes income to G in satisfaction of F's legal obligation to support G, the trust will not qualify as a QSST because F will be treated as the owner of the ordinary income portion of the trust. Further, the trust will not be a qualified subpart E trust because the trust will be subject to tax on the income allocable to corpus.

(iii) If, under the terms of the trust, a person (including the income beneficiary) has a special power to appoint, during the life of the income beneficiary, trust income or corpus to any person other than the current income beneficiary, the trust will not qualify as a QSST. However, if the power of appointment results in the grantor being treated as the owner of the entire trust under the rules of subpart E, the trust may be a permitted shareholder under section 1361 (c)(2)(A)(i) and paragraph (h)(1)(i) of this section.

(iv) If the terms of a trust or local law do not preclude the current income beneficiary from transferring the beneficiary's interest in the trust or do not preclude a person other than the current income beneficiary named in the trust instrument from being treated as a beneficiary of the trust under § 1.643(c)–1, the trust will still qualify as a QSST. However, if the income beneficiary transfers or assigns the income interest or a portion of the income interest to another, the trust may no longer qualify as a QSST, depending on the facts and circumstances, because any transferee of the current income beneficiary's income interest and any person treated as a beneficiary under § 1.643(c)–1 will be treated as a current income beneficiary for purposes of paragraph (j)(1)(ii) of this section and the trust may no longer meet the QSST requirements.

(v) If the terms of the trust do not preclude a person other than the current income beneficiary named in the trust instrument from being awarded an interest in the trust by the order of a court, the trust will qualify as a QSST assuming the trust meets the requirements of paragraphs (j)(1) (i) and (ii) of this section. However, if as a result of such court order, the trust no longer meets the QSST requirements, the trust no longer qualifies as a QSST and the corporation's S election will terminate.

(vi) A trust may qualify as a QSST even though a person other than the current income beneficiary is treated under subpart E as the owner of a part or all of that portion of a trust which does not consist of the S corporation stock, provided the entire trust meets the QSST requirements stated in paragraphs (j)(1) (i) and (ii) of this section.

(3) *Separate and independent shares of a trust.* For purposes of sections 1361 (c) and (d), a substantially separate and independent share of a trust, within the meaning of section 663(c) and the regulations thereunder, is treated as a separate trust. For a separate share which holds S corporation stock to qualify as a QSST, the terms of the trust applicable to that separate share must meet the QSST requirements stated in paragraphs (j)(1) (i) and (ii) of this section.

(4) *Qualified terminable interest property trust.* If property, including S corporation stock, or stock of a corporation that intends to make an S election, is transferred to a trust and an election is made to treat all or a portion of the transferred property as qualified terminable interest property (QTIP) under section 2056(b)(7), the income beneficiary may make the QSST election if the trust meets the requirements set out in paragraphs (j)(1) (i) and (ii) of this section. However, if property is transferred to a QTIP trust under section 2523(f), the income beneficiary may not make a QSST election even if the trust meets the requirements set forth in paragraph (j)(1)(ii) of this section because the grantor would be treated as the owner of the income portion of the trust under section 677. In addition, if property is transferred to a QTIP trust under section 2523(f), the trust does not qualify as a permitted shareholder under section 1361 (c)(2)(A)(i) and paragraph (h)(1)(i) of this section (a qualified subpart E trust), unless under the terms of the QTIP trust, the grantor is treated as the owner of the entire trust under sections 671 to 677. If the grantor ceases to be the income beneficiary's spouse, the trust may qualify as a QSST if it otherwise satisfies the requirements under paragraphs (j)(1) (i) and (ii) of this section.

(5) *Ceasing to meet the QSST requirements.* If a QSST for which an election under section 1361(d)(2) has been made (as described in paragraph (j)(6) of this section) ceases to meet any of the requirements specified in paragraph (j)(1)(ii) of this section, the provisions of this paragraph (j) will cease to apply as of the first day on which that requirement ceases to be met. If such a trust ceases to meet the

income distribution requirement specified in paragraph (j)(1)(i) of this section, but continues to meet all of the requirements in paragraph (j)(1)(ii) of this section, the provisions of this paragraph (j) will cease to apply as of the first day of the first taxable year beginning after the first taxable year for which the trust ceased to meet the income distribution requirement of paragraph (j)(1)(i) of this section. If a corporation's S election is inadvertently terminated as a result of a trust ceasing to meet the QSST requirements, the corporation may request relief under section 1362(f).

(6) *Qualified subchapter S trust election*—(i) *In general.* This paragraph (j)(6) applies to the election provided in section 1361(d)(2) (the QSST election) to treat a QSST (as defined in paragraph (j)(1) of this section) as a trust described in section 1361(c)(2)(A)(i), and thus a permitted shareholder. This election must be made separately with respect to each corporation whose stock is held by the trust. The QSST election does not itself constitute an election as to the status of the corporation; the corporation must make the election provided by section 1362(a) to be an S corporation. Until the effective date of a corporation's S election, the beneficiary is not treated as the owner of the stock of the corporation for purposes of section 678. Any action required by this paragraph (j) to be taken by a person who is under a legal disability by reason of age may be taken by that person's guardian or other legal representative, or if there be none, by that person's natural or adoptive parent.

(ii) *Filing the QSST election.* The current income beneficiary of the trust must make the election by signing and filing with the service center with which the corporation files its income tax return the applicable form or a statement that—

(A) Contains the name, address, and taxpayer identification number of the current income beneficiary, the trust, and the corporation;

(B) Identifies the election as an election made under section 1361(d)(2);

(C) Specifies the date on which the election is to become effective (not earlier than 15 days and two months before the date on which the election is filed);

(D) Specifies the date (or dates) on which the stock of the corporation was transferred to the trust; and

(E) Provides all information and representations necessary to show that:

(*1*) Under the terms of the trust and applicable local law—

(*i*) During the life of the current income beneficiary, there will be only one income beneficiary of the trust (if husband and wife are beneficiaries, that they will file joint returns and that both are U.S. residents or citizens);

(*ii*) Any corpus distributed during the life of the current income beneficiary may be distributed only to that beneficiary;

(*iii*) The current beneficiary's income interest in the trust will terminate on the earlier of the beneficiary's death or upon termination of the trust; and

(*iv*) Upon the termination of the trust during the life of such income beneficiary, the trust will distribute all its assets to such beneficiary.

(*2*) The trust is required to distribute all of its income currently, or that the trustee will distribute all of its income currently if not so required by the terms of the trust.

(*3*) No distribution of income or corpus by the trust will be in satisfaction of the grantor's legal obligation to support or maintain the income beneficiary.

(iii) *When to file the QSST election.* (A) If S corporation stock is transferred to a trust, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust. If a C corporation has made an election under section 1362(a) to be an S corporation (S election) and, before that corporation's S election is in effect, stock of that corporation is transferred to a trust, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust.

(B) If a trust holds C corporation stock and that C corporation makes an S election effective for the first day of the taxable year in which the S election is made, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the S election is effective. If a trust holds C corporation stock and that C corporation makes an S election effective for the first day of the taxable year following the taxable year in which the S election is made, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the S election is made. If a trust holds C corporation stock and that corporation makes an S election intending the S election to be effective for the first day of the taxable year in which the S election is made but, under § 1.1362–6(a)(2), such S election is subsequently treated as effective for the first day of the taxable year following the taxable year in which the S election is made, the fact that the QSST election states that the effective date of the QSST election is the first day of the taxable year in which the S election is made will not cause the QSST election to be ineffective for the first year in which the corporation's S election is effective.

(C) If a trust ceases to be a qualified subpart E trust but also satisfies the requirements of a QSST, the QSST election must be filed within the 16-day-and-2-month period beginning on the date on which the trust ceases to be a qualified subpart E trust. If the estate of the deemed owner of the trust is treated as the shareholder under paragraph (h)(3)(ii) of this section, the QSST election may be filed at any time but no later than the end of the 16-day-and-2-month period beginning on the date on which the estate of the deemed owner ceases to be treated as a shareholder.

(D) If a corporation's S election terminates because of a late QSST election, the corporation may request inadvertent termination relief under section 1362(f). See § 1.1362–4 for rules concerning inadvertent terminations.

(iv) *Protective QSST election when a person is an owner under subpart E.* If the grantor of a trust is treated as the owner under subpart E of all of the trust, or of a portion of the trust which consists of S corporation stock, and the current income beneficiary is not the grantor, the current income beneficiary may not make the QSST election, even if the trust meets the QSST requirements stated in paragraph (j)(1)(ii) of this section. See paragraph (j)(6)(iii)(C) of this section as to when the QSST election may be made. See also paragraph (j)(2)(vi) of this section. However, if the current income beneficiary (or beneficiaries who are husband and wife, if both spouses are U.S. citizens or residents and file a joint return) of a trust is treated under subpart E as owning all or a portion of the trust consisting of S corporation stock, the current income beneficiary (or beneficiaries who are husband and wife, if both spouses are U.S. citizens or residents and file a joint return) may make the QSST election. See *Example 8* of paragraph (k)(1) of this section.

(7) *Treatment as shareholder.* (i) The income beneficiary who makes the QSST election and is treated (for purposes of section 678(a)) as the owner of that portion of the trust that consists of S corporation stock is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368.

(ii) If, upon the death of an income beneficiary, the trust continues in existence, continues to hold S corporation stock but no longer satisfies the QSST requirements, and is not a qualified subpart E trust, then, solely for purposes of section 1361(b)(1), as of the

date of the income beneficiary's death, the estate of that income beneficiary is treated as the shareholder of the S corporation with respect to which the income beneficiary made the QSST election. The estate ordinarily will cease to be treated as the shareholder for purposes of section 1361(b)(1) upon the earlier of the transfer of that stock by the trust or the expiration of the 60-day period beginning on the day of the income beneficiary's death. However, if the entire corpus of the trust is includible in the gross estate of that income beneficiary, the estate will cease to be treated as the shareholder for purposes of section 1361(b)(1) upon the earlier of the transfer of that stock by the trust or the expiration of the 2-year period beginning on the day of the income beneficiary's death. For the purpose of determining whether the entire trust corpus is includible in the gross estate of the income beneficiary, any community property interest in the trust held by the income beneficiary's spouse which arises by reason of applicable U.S. state law is disregarded. During the period that the estate is treated as the shareholder for purposes of section 1361(b)(1), the trust is treated as the shareholder for purposes of sections 1366, 1367, and 1368. If, after the 60-day period, or the 2-year period, if applicable, the trust continues to hold S corporation stock, the corporation's S election terminates. If the termination is inadvertent, the corporation may request relief under section 1362(f).

(8) *Coordination with grantor trust rules.* If a valid QSST election is made, the income beneficiary is treated as the owner, for purposes of section 678(a), of that portion of the trust that consists of the stock of the S corporation for which the QSST election was made. However, solely for purposes of applying the preceding sentence to a QSST, an income beneficiary who is a deemed section 678 owner only by reason of section 1361(d)(1) will not be treated as the owner of the S corporation stock in determining and attributing the federal income tax consequences of a disposition of the stock by the QSST. For example, if the disposition is a sale, the QSST election terminates as to the stock sold and any gain or loss recognized on the sale will be that of the trust, not the income beneficiary. Similarly, if a QSST distributes its S corporation stock to the income beneficiary, the QSST election terminates as to the distributed stock and the consequences of the distribution are determined by reference to the status of the trust apart from the income beneficiary's terminating ownership status under sections 678 and 1361(d)(1). The portions of the trust other than the portion consisting of S corporation stock are subject to subparts A through D of subchapter J of chapter 1, except as otherwise required by subpart E of the Internal Revenue Code.

(9) *Successive income beneficiary.* (i) If the income beneficiary of a QSST who made a QSST election dies, each successive income beneficiary of that trust is treated as consenting to the election unless a successive income beneficiary affirmatively refuses to consent to the election. For this purpose, the term *successive income beneficiary* includes a beneficiary of a trust whose interest is a separate share within the meaning of section 663(c), but does not include any beneficiary of a trust that is created upon the death of the income beneficiary of the QSST and which is a new trust under local law.

(ii) The application of this paragraph (j)(9) is illustrated by the following examples:

Example 1. Shares of stock in Corporation X, an S corporation, are held by Trust A, a QSST for which a QSST election was made. B is the sole income beneficiary of Trust A. On B's death, under the terms of Trust A, J and K become the current income beneficiaries of Trust A. J and K each hold a separate and independent share of Trust A within the meaning of section 663(c). J and K are successive income beneficiaries of Trust A, and they are treated as consenting to B's QSST election.

Example 2. Assume the same facts as in *Example 1,* except that on B's death, under the terms of Trust A and local law, Trust A terminates and the principal is to be divided equally and held in newly created Trust B and Trust C. The sole income beneficiaries of Trust B and Trust C are J and K, respectively. Because Trust A terminated, J and K are not successive income beneficiaries of Trust A. J and K must make QSST elections for their respective trusts to qualify as QSSTs, if they qualify. The result is the same whether or not the trustee of Trusts B and C is the same as the trustee of trust A.

(10) *Affirmative refusal to consent*—(i) *Required statement.* A successive income beneficiary of a QSST must make an affirmative refusal to consent by signing and filing with the service center where the corporation files its income tax return a statement that—

(A) Contains the name, address, and taxpayer identification number of the successive income beneficiary, the trust, and the corporation for which the election was made;

(B) Identifies the refusal as an affirmative refusal to consent under section 1361(d)(2); and

(C) Sets forth the date on which the successive income beneficiary became the income beneficiary.

(ii) *Filing date and effectiveness.* The affirmative refusal to consent must be filed within 15 days and 2 months after the date on which the successive income beneficiary becomes the income beneficiary. The affirmative refusal to consent will be effective as of the date on which the successive income beneficiary becomes the current income beneficiary.

(11) *Revocation of QSST election.* A QSST election may be revoked only with the consent of the Commissioner. The Commissioner will not grant a revocation when one of its purposes is the avoidance of federal income taxes or when the taxable year is closed. The application for consent to revoke the election must be submitted to the Internal Revenue Service in the form of a letter ruling request under the appropriate revenue procedure. The application must be signed by the current income beneficiary and must—

(i) Contain the name, address, and taxpayer identification number of the current income beneficiary, the trust, and the corporation with respect to which the QSST election was made;

(ii) Identify the election being revoked as an election made under section 1361(d)(2); and

(iii) Explain why the current income beneficiary seeks to revoke the QSST election and indicate that the beneficiary understands the consequences of the revocation.

(k)(1) *Examples.* The provisions of paragraphs (h) and (j) of this section are illustrated by the following examples in which it is assumed that all noncorporate persons are citizens or residents of the United States:

Example 1. (i) *Terms of the trust.* In 1996, A and A's spouse, B, created an intervivos trust and each funded the trust with separately owned stock of an S corporation. Under the terms of the trust, A and B designated themselves as the income beneficiaries and each, individually, retained the power to amend or revoke the trust with respect to the trust assets attributable to their respective trust contributions. Upon A's death, the trust is to be divided into two separate parts; one part attributable to the assets A contributed to the trust and one part attributable to B's contributions. Before the trust is divided, and during the administration of A's estate, all trust income is payable to B. The part of the trust attributable to B's contributions is to continue in trust under the terms of which B is designated as the sole income beneficiary and retains the power to amend or revoke the trust. The part attributable to A's contributions is to be divided into two separate trusts both of which have B as the sole income beneficiary for life. One trust, the *Credit Shelter Trust,* is to be funded with an amount that can pass free of estate tax by reason of A's available estate tax unified

credit. The terms of the Credit Shelter Trust meet the requirements of section 1361(d)(3) as a QSST. The balance of the property passes to a Marital Trust, the terms of which satisfy the requirements of section 1361(d)(3) as a QSST and section 2056(b)(7) as QTIP. The appropriate fiduciary under § 20.2056(b)–7(b)(3) is directed to make an election under section 2056(b)(7).

(ii) *Results after deemed owner's death.* On February 3, 1997, A dies and the portion of the trust assets attributable to A's contributions including the S stock contributed by A, is includible in A's gross estate under sections 2036 and 2038. During the administration of A's estate, the trust holds the S corporation stock. Under section 1361(c)(2)(B)(ii), A's estate is treated as the shareholder of the S corporation stock that was included in A's gross estate for purposes of section 1361(b)(1); however, for purposes of sections 1366, 1367, and 1368, the trust is treated as the shareholder. B's part of the trust continues to be a qualified subpart E trust of which B is the owner under sections 676 and 677. B, therefore, continues to be treated as the shareholder of the S corporation stock in that portion of the trust. On May 13, 1997, during the continuing administration of A's estate, the trust is divided into separate trusts in accordance with the terms of the trust instrument. The S corporation stock that was included in A's gross estate is distributed to the Marital Trust and to the Credit Shelter Trust. A's estate will cease to be treated as the shareholder of the S corporation under section 1361(c)(2)(B)(ii) on May 13, 1997 (the date on which the S corporation stock was transferred to the trusts). B, as the income beneficiary of the Marital Trust and the Credit Shelter Trust, must make the QSST election for each trust by July 27, 1997 (the end of the 16-day-and-2-month period beginning on the date the estate ceases to be treated as a shareholder) to have the trusts become permitted shareholders of the S corporation.

Example 2. (i) *Qualified subpart E trust as shareholder.* In 1997, A, an individual established a trust and transferred to the trust A's shares of stock of Corporation M, an S corporation. A has the power to revoke the entire trust. The terms of the trust require that all income be paid to B and otherwise meet the requirements of a QSST under section 1361(d)(3). The trust will continue in existence after A's death. The trust is a qualified subpart E trust described in section 1361(c)(2)(A)(i) during A's life, and A (not the trust) is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368.

(ii) *Trust ceasing to be a qualified subpart E trust on deemed owner's death.* Assume the same facts as paragraph (i) of this *Example 2*, except that A dies without having exercised A's power to revoke. Upon A's death, the trust ceases to be a qualified subpart E trust described in section 1361(c)(2)(A)(i). A's estate (and not the trust) is treated as the shareholder for purposes of section 1361(b)(1). Because the entire corpus of the trust is includible in A's gross estate under section 2038, A's estate will cease to be treated as the shareholder for purposes of section 1361(b)(1) upon the earlier of the transfer of the Corporation M stock by the trust (other than to A's estate), the expiration of the 2-year period beginning on the day of A's death, or the effective date of a QSST election if the trust qualifies as a QSST. However, until that time, because the trust continues in existence after A's death and will receive any distributions with respect to the stock it holds, the trust is treated as the shareholder for purposes of sections 1366, 1367, and 1368. After the 2-year period, if no QSST election is made, the corporation ceases to be an S corporation, but the trust continues as the shareholder of a C corporation.

(iii) *Trust continuing to be a qualified subpart E trust on deemed owner's death.* Assume the same facts as paragraph (ii) of this *Example 2*, except that the terms of the trust also provide that if A does not exercise the power to revoke before A's death, B will have the sole power to withdraw all trust property at any time after A's death. The trust continues to qualify as a qualified subpart E trust after A's death because, upon A's death, B is deemed to be the owner of the entire trust under section 678. Because the trust does not cease to be a qualified subpart E trust upon A's death, B (and not A's estate) is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368. Since the trust qualifies as a QSST, B may make a protective QSST election under paragraph (j)(6)(iv) of this section.

Example 3. 60-day rule under section 1361(c)(2)(A)(ii) and (iii). F owns stock of Corporation P, an S corporation. In addition, F is the deemed owner of a qualified subpart E trust that holds stock in Corporation O, an S corporation. F dies on July 1, 1996. The trust continues in existence after F's death but is no longer a qualified subpart E trust. The entire corpus of the trust is not includible in F's gross estate. On August 1, 1996, F's shares of stock in Corporation P are transferred to the trust pursuant to the terms of F's will. Because the stock of Corporation P was not held by the trust when F died, section 1361(c)(2)(A)(ii) does not apply with respect to that stock. Under section 1361(c)(2)(A)(iii), the last day on which F's estate could be treated as a permitted shareholder of Corporation P is September 29, 1996 (that is, the last day of the 60-day period that begins on the date of the transfer from the estate to the trust). With respect to the shares of stock in Corporation O held by the trust at the time of F's death, section 1361(c)(2)(A)(ii) applies and the last day on which F's estate could be treated as a permitted shareholder of Corporation O is August 29, 1996 (that is, the last day of the 60-day period that begins on the date of F's death).

Example 4. (i) QSST when terms do not require current distribution of income. Corporation Q, a calendar year corporation, makes an election to be an S corporation effective for calendar year 1996. On July 1, 1996, G, a shareholder of Corporation Q, transfers G's shares of Corporation Q stock to a trust with H as its current income beneficiary. The terms of the trust otherwise satisfy the QSST requirements, but authorize the trustee in its discretion to accumulate or distribute the trust income. However, the trust, which uses the calendar year as its taxable year, initially satisfies the income distribution requirement because the trustee is currently distributing all of the income. On August 1, 1996, H makes a QSST election with respect to Corporation Q that is effective as of July 1, 1996. Accordingly, as of July 1, 1996, the trust is a QSST and H is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368.

(ii) *QSST when trust income is not distributed currently.* Assume the same facts as in paragraph (i) of this *Example 4*, except that, for the taxable year ending on December 31, 1997, the trustee accumulates some trust income. The trust ceases to be a QSST on January 1, 1998, because the trust failed to distribute all of its income for the taxable year ending December 31, 1997. Thus, Corporation Q ceases to be an S corporation as of January 1, 1998, because the trust is not a permitted shareholder.

(iii) *QSST when a person other than the current income beneficiary may receive trust corpus.* Assume the same facts as in paragraph (i) of this *Example 4*, except that H dies on November 1, 1996. Under the terms of the trust, after H's death, L is the income beneficiary of the trust and the trustee is authorized to distribute trust corpus to L as well as to J. The trust ceases to be a QSST as of November 1, 1996, because corpus distributions may be made to someone other than L, the current (successive) income beneficiary. Under section 1361(c)(2)(A)(ii), H's estate (and not the trust) is considered to be the shareholder for purposes of section 1361(b)(1) for the 60-day period beginning on November 1, 1996. However, because the trust continues in existence after H's death and will receive any distributions from the corporation, the trust (and not H's estate) is treated as the shareholder for purposes of sections 1366, 1367, and 1368, during that 60-day period. After the 60-day period, the S election terminates and the trust continues as a shareholder of a C corporation. If the termination is inadvertent, Corporation Q may request relief under section 1362(f). However, the S election would not terminate if the trustee distributed all Corporation Q shares to L, J, or both before December 30, 1996, (the last day of the 60-day period) assuming that neither L nor J becomes the 36th shareholder of Corporation Q as a result of the distribution.

Example 5. QSST when current income beneficiary assigns the income interest to a person not named in the trust. On January 1, 1996, stock of Corporation R, a calendar year S corporation, is transferred to a trust that satisfies all of the requirements to be a QSST. Neither the terms of the trust nor local law preclude the current income beneficiary, K, from assigning K's income interest in the trust. K files a timely QSST election that is effective January 1, 1996. On July 1, 1996, K assigns the income interest in the trust to N. Under applicable state law, the trustee is bound as a result of the assignment to distribute the trust income to N. Thus, the QSST will cease to qualify as a QSST under section 1361(d)(3)(A)(iii) because N's interest will terminate on K's death (rather than on N's death). Accordingly, as of the date of the

assignment, the trust ceases to be a QSST and Corporation R ceases to be an S corporation.

Example 6. QSST when terms fail to provide for distribution of trust assets upon termination during life of current income beneficiary. A contributes S corporation stock to a trust the terms of which provide for one income beneficiary, annual distributions of income, discretionary invasion of corpus only for the benefit of the income beneficiary, and termination of the trust only upon the death of the current income beneficiary. Since the trust can terminate only upon the death of the income beneficiary, the governing instrument fails to provide for any distribution of trust assets during the income beneficiary's life. The governing instrument's silence on this point does not disqualify the trust under section 1361(d)(3)(A)(ii) or (iv).

Example 7. QSST when settlor of trust retains a reversion in the trust. On January 10, 1996, M transfers to a trust shares of stock in corporation X, an S corporation. D, who is 13 years old and not a lineal descendant of M, is the sole income beneficiary of the trust. On termination of the trust, the principal (including the X shares) is to revert to M. The trust instrument provides that the trust will terminate upon the earlier of D's death or D's 21st birthday. The terms of the trust satisfy all of the requirements to be a QSST except those of section 1361(d)(3)(A)(ii) (that corpus may be distributed during the current income beneficiary's life only to that beneficiary) and (iv) (that, upon termination of the trust during the life of the current income beneficiary, the corpus, must be distributed to that beneficiary). On February 10, 1996, M makes a gift of M's reversionary interest to D. Until M assigns M's reversion in the trust to D, M is deemed to own the entire trust under section 673(a) and the trust is a qualified subpart E trust. For purposes of section 1361(b)(1), 1366, 1367, and 1368, M is the shareholder of X. The trust ceases to be a qualified subpart E trust on February 10, 1996. Assuming that, by virtue of the assignment to D of M's reversionary interest, D (upon his 21st birthday) or D's estate (in the case of D's death before reaching age 21) is entitled under local law to receive the trust principal, the trust will be deemed as of February 10, 1996, to have satisfied the conditions of section 1361(d)(3)(A)(ii) and (iv) even though the terms of the trust do not explicitly so provide. D must make a QSST election by no later than April 25, 1996 (the end of the 16-day-and-2-month period that begins on February 10, 1996, the date on which the X stock is deemed transferred to the trust by M). See example (5) of § 1.1001–2(c) of the regulations.

Example 8. QSST when the income beneficiary has the power to withdraw corpus. On January 1, 1996, F transfers stock of an S corporation to an irrevocable trust whose income beneficiary is F's son, C. Under the terms of the trust, C is given the noncumulative power to withdraw from the corpus of the trust the greater of $5,000 or 5 percent of the value of the corpus on a yearly basis. The terms of the trust meet the QSST requirements. Assuming the trust distributions are not in satisfaction of F's legal obligation to support C, the trust qualifies as a QSST. C (or if C is a minor, C's legal representative) must make the QSST election no later than March 16, 1996 (the end of the 16-day-and-2-month period that begins on the date the stock is transferred to the trust).

Example 9. (i) Filing the QSST election. On January 1, 1996, stock of Corporation T, a calendar year C corporation, is transferred to a trust that satisfies all of the requirements to be a QSST. On January 31, 1996, Corporation T files an election to be an S corporation that is to be effective for its taxable year beginning on January 1, 1996. In order for the S election to be effective for the 1996 taxable year, the QSST election must be effective January 1, 1996, and must be filed within the period beginning on January 1, 1996, and ending March 16, 1996 (the 16-day-and-2-month period beginning on the first day of the first taxable year for which the election to be an S corporation is intended to be effective).

(ii) *QSST election when the S election is filed late.* Assume the same facts as in paragraph (i) of this *Example 9*, except that Corporation T's election to be an S corporation is filed on April 1, 1996 (after the 15th day of the 3rd month of the first taxable year for which it is to be effective but before the end of that taxable year). Because the election to be an S corporation is not timely filed for the 1996 taxable year, under section 1362(b)(3), the S election is treated as made for the taxable year beginning on January 1, 1997. The QSST election must be filed within the 16-day-and-2-month period beginning on April 1, 1996, the date the S election was made, and ending on June 16, 1996.

Example 10. (i) *Transfers to QTIP trust.* On June 1, 1996, A transferred S corporation stock to a trust for the benefit of A's spouse B, the terms of which satisfy the requirements of section 2523(f)(2) as qualified terminable interest property. Under the terms of the trust, B is the sole income beneficiary for life. In addition, corpus may be distributed to B, at the trustee's discretion, during B's lifetime. However, under section 677(a), A is treated as the owner of the trust. Accordingly, the trust is a permitted shareholder of the S corporation under section 1361(c)(2)(A)(i), and A is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368.

(ii) *Transfers to QTIP trust where husband and wife divorce.* Assume the same facts as in paragraph (i) of this *Example 10*, except that A and B divorce on May 2, 1997. Under section 682, A ceases to be treated as the owner of the trust under section 677(a) because A and B are no longer husband and wife. Under section 682, after the divorce, B is the income beneficiary of the trust and corpus of the trust may only be distributed to B. Accordingly, assuming the trust otherwise meets the requirements of section 1361(d)(3), B must make the QSST election within 2 months and 15 days after the date of the divorce.

(iii) *Transfers to QTIP trust where no corpus distribution is permitted.* Assume the same facts as in paragraph (i) of this *Example 10*, except that the terms of the trust do not permit corpus to be distributed to B and require its retention by the trust for distribution to A and B's surviving children after the death of B. Under section 677, A is treated as the owner of the ordinary income portion of the trust, but the trust will be subject to tax on gross income allocable to corpus. Accordingly, the trust does not qualify as an eligible shareholder of the S corporation because it is neither a qualified subpart E trust nor a QSST.

(2) *Effective date*—(i) *In general.* Paragraph (a), and paragraphs (c) through (k) of this section apply to taxable years of a corporation beginning after July 21, 1995. For taxable years beginning on or before July 21, 1995, to which paragraph (a), and paragraphs (c) through (k) do not apply, see § 18.1361–1 of this chapter (as contained in the 26 CFR edition revised April 1, 1995).

(ii) *Exception.* If a QSST has sold or otherwise disposed of all or a portion of its S corporation stock in a tax year that is open for the QSST and the income beneficiary but on or before July 21, 1995, the QSST and the income beneficiary may both treat the transaction as if the beneficiary was the owner of the stock sold or disposed of, and thus recognize any gain or loss, or as if the QSST was the owner of the stock sold or disposed of as described in paragraph (j)(8) of this section. This exception applies only if the QSST and the income beneficiary take consistent reporting positions. The QSST and the income beneficiary must disclose by a statement on their respective returns (or amended returns), that they are taking consistent reporting positions.

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

Par. 4. The authority citation for part 18 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 18.0 is revised to read as follows:

§ 18.0 Effective date of temporary regulations under the Subchapter S Revision Act of 1982.

The temporary regulations provided under § 18.1377–1, 18.1379–1, and 18.1379–2 are effective with respect to taxable years beginning after 1982, and the temporary regulations provided under § 18.1378–1 are effective with respect to elections made after October 19, 1982.

§§ 18.1361–1 and 18.1366–5 [Removed]

Par. 6. Sections 18.1361–1 and 18.1366–5 are removed.

§ 18.1378–1 [Amended]

Par. 7. Section 18.1378–1 is amended as follows:

1. The fourth sentence of paragraph (b)(2)(i) is amended by removing the language ''§ 18.1362–1(b)'' and adding the language ''§ 1.1362–6(b)(2)(ii) of this chapter'' in its place.

2. The fifth sentence of paragraph (b)(2)(i) is removed.

3. The second sentence of paragraph (b)(2)(ii) is amended by removing the language ''§ 18.1362–1(a)'' and adding the language ''§ 1.1362–6(b)(2)(i) of this chapter'' in its place.

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

5. Paragraph (c) is removed and reserved.

6. Paragraph (e) is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 9. Section 602.101, paragraph (c) is amended by removing the entry for 18.1361–1 from the table and adding the entry ''1.1361–1 . . . 1545–0731'' in numerical order to the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: May 9, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–17914 Filed 7–20–95; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 301

[TD 8603]

RIN 1545–AT57

Methods of Signing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the signing of returns, statements, or other documents. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective on July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Celia Gabrysh, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) that relate to signing returns, statements, and other documents.

Explanation of Provisions

Section 6061 provides in part that '' . . . any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.'' Traditionally, the IRS has accepted pen-to-paper signatures. The Service will prescribe additional methods of signing to be used when electronically filing returns and other documents.

The temporary regulations clarify that the IRS may prescribe the specific method of signing any return, statement, or other document. The temporary regulations also provide that the IRS may require a return preparer to use a method of signing other than a pen-to-paper signature or a facsimile signature stamp of the person filing a return, statement, or other document.

Special Analyses

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

Drafting Information

The principal author of these regulations is Celia Gabrysh, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6695–1T is added to read as follows:

§ 1.6695–1T Other assessable penalties with respect to the preparation of income tax returns for other persons (temporary).

(a) [Reserved].

(b) Unless the Secretary has prescribed another method of signing pursuant to § 301.6061–1T(b) on or after July 21, 1995, an individual who is an income tax return preparer with respect to a return of tax under subtitle A of the Internal Revenue Code (Code) or claim for refund of tax under subtitle A of the Code shall manually sign the return or claim for refund (which may be a photocopy) in the appropriate space provided on the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

Section 301.6061–1T also issued under 26 U.S.C. 6061.

Par. 2. Section 301.6061–1T is added to read as follows:

§ 301.6061–1T Signing of returns and other documents (temporary).

(a) [Reserved].

(b) *Method of signing.* The Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

(c) *Effective date.* This section is effective on July 21, 1995.

Approved: July 5, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–18053 Filed 7–20–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–409–F]

RIN 0938–AD02

Medicare Program; Optional Payment System for Low Medicare Volume Skilled Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule allows skilled nursing facilities (SNFs) that provide fewer than 1,500 days of care to Medicare beneficiaries in a cost reporting period to have the option of receiving prospectively determined payment rates in the following cost reporting period. The prospectively determined payment rates are based on components of SNF costs such as routine operating costs, capital-related costs, and a return on equity for proprietary facilities for routine services furnished before October 1, 1993. This rule also specifies that the return on equity provision for proprietary SNFs is eliminated for services furnished on or after October 1, 1993.

EFFECTIVE DATE: These regulations are effective on August 21, 1995.

FOR FURTHER INFORMATION CONTACT: David Goldberg—Simplified Cost Reporting, (410) 966–4512; Robert Kuhl—All Other Issues, (410) 966–4597.

SUPPLEMENTARY INFORMATION:

I. Background

The Social Security Act (the Act) authorizes the Secretary to set limits on the allowable costs incurred by a skilled nursing facility (SNF) in furnishing care to Medicare beneficiaries. The limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Section 1888 of the Act sets forth the statutory provisions that specifically deal with SNF payments. Implementing regulations appear at 42 CFR 413.30.

Section 1888(d) of the Act (as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272)) requires the establishment of prospectively determined payment rates for routine services furnished by low Medicare volume SNFs choosing to be paid on a prospective basis. The rates paid to proprietary SNFs choosing this method of payment included a component for return on equity related to routine service costs, which was subsequently eliminated for services furnished on or after October 1, 1993 (see below).

Specifically, section 1888(d) of the Act—

- Specifies that SNFs with fewer than 1,500 Medicare inpatient days in one cost reporting period have the option of being paid on the basis of a prospectively determined payment rate in the following cost reporting period.
- Requires that the amount of payment under the SNF prospectively determined payment rate system be determined on a per diem basis. However, that amount may not exceed the limit on routine service costs set forth in section 1888(a) of the Act with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility. The limit used for this purpose is the applicable routine service cost limit in effect when the provider elects to be paid under prospectively determined payment rates.

For SNFs located in an urban area, the prospectively determined payment amount is equal to 105 percent of the mean of the per diem reasonable routine service and routine capital-related costs of services for SNFs in urban areas within the same census region. The mean per diem is determined without regard to the limitations of section 1888(a) of the Act and is adjusted for different area wage levels.

For SNFs located in a rural area, the prospectively determined payment amount is equal to 105 percent of the mean of the per diem reasonable routine service and routine capital-related costs of covered services for SNFs in rural areas within the same census region. The mean per diem is determined without regard to the limitations of section 1888(a) of the Act and is adjusted for different area wage levels.

- Requires the Secretary to establish the prospectively determined payment rates for each Federal fiscal year at least 90 days prior to the beginning of that fiscal year. The law also requires an SNF to notify the Secretary of its intention to be paid a prospectively determined payment rate no later than 30 days before the beginning of the cost reporting period for which the request is made.
- Requires the Secretary to provide for a simplified cost report to be filed by SNFs being paid under prospectively determined payment rates.
- Provides that, in the case of an SNF receiving prospectively determined payment rates, the Secretary may pay for ancillary services on a reasonable charge basis, rather than on a cost basis, if the Secretary determines that a reasonable charge basis provides an equitable level of payment and eases the SNF's reporting burden.

Section 13503(c) of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Public Law 103–66) amended section 1861(v)(1)(B) of the Act to eliminate the provision for payment for a return on equity for services furnished by proprietary SNFs on or after October 1, 1993. Also, we note that section 13503(b) states that the Secretary may not change the amount of any prospectively determined payment rate paid to an SNF under section 1888(d) of the Act for services furnished during cost reporting periods beginning during fiscal years (FYs) 1994 and 1995, except as necessary to take into account the elimination of the return on equity provision.

In order to provide the public with information on the optional prospectively determined payment rate system for SNF routine services as soon as possible, and to implement the prospectively determined rates provided for under section 1888(d) of the Act, as amended, we initially issued guidelines in sections 2820 through 2822 of Chapter 28 of the Provider Reimbursement Manual (HCFA Pub. 15–1) in August 1986.

The rates were effective for cost reporting periods beginning on or after October 1, 1986, but before October 1, 1987. Additional transmittals were issued providing rates for subsequent cost reporting periods. As described below, the guidelines in the Provider Reimbursement Manual closely adhere to the requirements of section 1888(d) of the Act. In calculating the prospectively determined payment rates announced in the manual transmittals, we used the most recent data available at that time.

In the guidelines issued under Chapter 28 of the Provider Reimbursement Manual—

- We stipulated that an SNF may choose to be paid a prospectively determined payment rate for general inpatient routine services if the facility met the statutory criteria that, in its immediately preceding cost reporting period, it had fewer than 1,500

Medicare patient days and it made a timely election.

• For prospectively determined payment rate purposes, we grouped SNFs by census region, and by urban area or rural area designation within the region. The term ''urban area'' means an area within a Metropolitan Statistical Area (MSA) (as defined by the Office of Management and Budget (OMB)). The term ''rural area'' means any area outside an urban area.

• We adjusted the labor portion of the prospectively determined payment rate to account for area wage differences through the application of an appropriate wage index.

• We based the prospectively determined payment rate on reported costs, adjusted for actual and projected cost increases by applying the SNF market basket index.

• For SNFs electing to receive payment under prospectively determined payment rates, we specified that ancillary services are paid on the basis of reasonable cost with retroactive adjustment based on an annual cost report.

II. Provisions of the Proposed Regulations

On June 8, 1994, we published in the **Federal Register** a proposed rule (59 FR 29578) that generally would codify the statutory provisions concerning prospectively determined payment rates for SNFs, as now explained in chapter 28 of the Provider Reimbursement Manual. The proposed rule also specified that the return on equity provision for proprietary SNFs would be eliminated for services furnished on or after October 1, 1993. The major provisions of the proposed regulations are set forth below:

A. General Provisions

• We proposed to add new § 413.300 to introduce the contents of Subpart I and to summarize the conditions and procedures for making prospectively determined payments to qualifying SNFs. In this section, we proposed to define the terms ''area wage level'', ''census region'', ''routine operating costs'', ''routine capital-related costs'', and ''urban'' and ''rural'' areas, as we had defined these terms in the manual.

B. Eligibility Criteria

• In new § 413.304, we proposed that SNFs that furnished fewer than 1,500 Medicare covered inpatient days in a cost reporting period as reported on the Medicare cost report would be allowed the option of being paid on the basis of prospectively determined payment rates during the next cost reporting period. If an SNF's preceding Medicare cost reporting period was shorter than a full twelve months, the SNF must have had an average daily Medicare census for the period of not greater than 4.1 to qualify for prospectively determined payment. This figure was determined by dividing 1,499 (that is, the largest number of Medicare inpatient days fewer than 1,500) by the number of days in a cost reporting year. If there was no preceding cost reporting period for which an SNF was approved for Medicare participation, we proposed that the SNF would automatically qualify for prospectively determined payment for the first cost reporting period.

C. Approval Process

• In new § 413.308, we proposed to establish rules to govern the process by which SNFs may request and be approved for payment under the prospectively determined payment rate option. Under section 1888(d) of the Act, we are required to establish the prospectively determined payment rates at least 90 days before the beginning of each Federal fiscal year. We proposed that an SNF request to receive prospectively determined payments by notifying its fiscal intermediary of its intention at least 30 days before the beginning of the cost reporting period for which the request is made. The intermediary would tentatively notify the SNF of whether the SNF qualifies for the option.

In most cases, a final count of Medicare inpatient days cannot be made for a cost reporting period before the beginning of the next cost reporting period. Therefore, the intermediary's initial determination of provider eligibility would be a tentative approval or disapproval. The final determination would be made once a count of the total Medicare inpatient days in the preceding cost reporting period is available. We proposed that the intermediary would notify the SNF of the final determination within 10 working days after the data necessary to make the determination are available. If tentative approval were given and the final determination was that the SNF did not qualify to be paid on the basis of the prospectively determined payment rate, the intermediary would adjust payments to reflect payment on a reasonable cost basis.

We proposed that for a newly participating SNF with no preceding cost reporting period, the election must be made within 30 days of its notification of approval to participate in Medicare.

The election by the SNF and any approval by the intermediary would be effective for only one cost reporting period at a time. We also specified that once an election has been made and approved and the cost reporting period has begun, the SNF may not revoke its election for that period. Each SNF electing to receive a prospectively determined payment rate would agree to accept that rate prior to the start of the cost reporting period, regardless of what its final costs for the period would be.

D. Basis of Payment

• We proposed to add new § 413.310 to set forth the basis of payment to be used for routine service costs, capital-related costs, and return on equity (for services furnished before October 1, 1993), as well as for ancillary service costs, as specified in sections 1888(d)(2) and (d)(6) of the Act. We specified the following:

—Prospectively determined payment would be in lieu of payment on a reasonable cost basis for routine services.

—Prospectively determined payment would also be in lieu of payment for routine capital costs.

—The routine operating component of the prospectively determined payment rate, excluding capital cost and excluding return on equity (if applicable), would not exceed the amount of the provider's routine service cost limit determined under § 413.30 that is in effect when the provider elects to be paid a prospectively determined payment rate.

E. Methodology for Calculating Rates

• We proposed to add new § 413.312 to establish the methodology for determining the prospectively determined payment rates as specified in sections 1888 (d)(2) and (d)(6) of the Act. Under these sections of the Act, mean per diem routine operating costs, capital-related costs, and, for proprietary SNFs, return on equity for services furnished before October 1, 1993, are determined separately for SNFs located in urban areas and those in rural areas for the nine census regions.

F. Determining Routine Per Diem Rate

• In § 413.314, we described the proposed methodology for determining the routine per diem rate for an SNF. We explained that the per diem rate would be composed of a routine operating portion, a capital-related cost portion applicable to routine services, and, for proprietary SNFs, a return on equity portion for services furnished before October 1, 1993. The labor-related costs of the routine operating

portion would be adjusted to reflect area wage differences. The total rate would be adjusted by using a factor based on the projected increase in the market basket index to reflect a different cost reporting period if an SNF's cost reporting period is other than October 1 through September 30.

We also provided that the prospectively determined payment rate, excluding capital costs and excluding return on equity (if applicable), may not exceed the amount of an SNF's routine service cost limit that is in effect when the provider elects to be paid a prospective payment rate.

We proposed basing the prospectively determined payment rates on combined freestanding and hospital-based SNF cost data, and we solicited public comments on the proposed methodology.

G. Determining Payment Amount for Ancillary Services

- In § 413.316, we proposed that ancillary services continue to be paid on the basis of reasonable cost. We described in detail in the proposed rule (59 FR 29582) a number of alternative methodologies that we are considering as we continue to search for a way to implement section 1888(d)(6) of the Act and bring ancillary services under the prospectively determined payment rate system. We solicited comments on those methodologies, and indicated that we would consider other methodologies that commenters might suggest.

H. Publication of Rates

- In new § 413.320, we proposed that HCFA would update the routine prospectively determined payment rates in a **Federal Register** notice published no later than July 1 of each year. In the notices, we would establish the rates for routine services under the prospectively determined payment rate system.

I. Simplified Cost Report

- All Medicare providers with low Medicare utilization have had, at the intermediary's discretion, the option of filing less than a full Medicare cost report. We indicated that this option would continue to be available to those SNFs that qualify for it. In addition, in new § 413.321, we proposed that a simplified cost report would be filed by certain SNFs receiving a prospectively determined rate. At this time, a simplified form is available only for freestanding SNFs. The simplified form is not applicable to hospital-based SNFs or SNFs that are a part of a health care complex. We are in the process of developing a simplified form to be used by those facilities.

The new simplified cost report requires inputting only the cost information necessary for determining prospective payment rates. The report employs a simplified method of cost finding to be used in lieu of the cost finding methods described in § 413.24(d). We also proposed changing § 413.24(d) to clarify that the cost finding provisions of that regulation do not apply to those SNFs that qualify for the simplified method of cost finding. In addition, we proposed to revise § 413.24(h) to clarify that the waiver of full cost reporting for low program utilization also applies to providers filing a simplified cost report.

III. Analysis of and Responses to Public Comments

We received three items of correspondence commenting on the June 8, 1994 proposed rule. Following are comments from these letters, and our responses to them.

Comment: One commenter requested that, for purposes of determining eligibility to receive a prospectively determined rate, the qualifying number of Medicare days in the preceding year be increased from fewer than 1,500 days to perhaps as many as 2,500 days. Another commenter recommended that we recognize some level of fluctuation in volume and allow a provider to continue receiving the prospective payment rate even if the number of days fluctuates to 2,000 days in a subsequent year, for no more than 2 years.

Response: Section 1888(d)(1) of the Act specifies that SNFs with fewer than 1,500 Medicare inpatient days in one cost reporting period have the option of being paid on the basis of a prospectively determined payment rate in the following cost reporting period. Absent legislative change, we have no discretion to change this threshold.

Comment: With regard to our proposal that an SNF with no prior cost reporting period would automatically qualify for being paid a prospectively determined payment rate, one commenter requested that the automatic qualification be a ''final'' determination of eligibility.

Response: Section 1888(d)(4) of the Act requires an SNF to notify the Secretary of its intention to be paid a prospectively determined payment rate for a cost reporting period no later than 30 days before the beginning of that period. For a newly participating SNF, the notification date is often the beginning date of the cost reporting period. Thus, we believe it is equitable to allow an SNF 30 days after its notification of approval to participate in Medicare to submit a request to be paid a prospectively determined rate, as established under § 413.308(a) of this final rule. Accordingly, a final determination of eligibility for that cost reporting period depends on the SNF meeting this filing requirement.

Comment: One commenter suggested that once an SNF is paid a prospectively determined payment rate, the prospective payment status should continue until the SNF no longer qualifies or elects to revoke this status.

Response: As stated above, section 1888(d)(4) of the Act requires an SNF to notify the Secretary of its intention to be paid a prospectively determined payment rate for a cost reporting period no later than 30 days before the beginning of that period. The Secretary is required to establish the prospective payment amounts for each fiscal year based on the most recent data available for a 12-month period. Accordingly, we believe that the intent of the statute is that a separate request be made for each annual cost reporting period for which an SNF wishes to receive a prospectively determined payment rate. Therefore, we have not adopted this proposal.

Comment: One commenter stated that we should define the data source for making a final determination regarding the number of Medicare days in a cost reporting period. The commenter also asked that we clarify when the 10 working-day window referred to in § 413.308(b) begins.

Response: The settled cost report is the source for making the final determination of the number of Medicare days. Under § 413.308, the intermediary notifies an SNF of its initial determination within 10 days of receiving all data necessary to make the determination. The 10-day period for notification of a final determination begins with the issuance of the Notice of Program Reimbursement. We do not believe we need to include this information in the regulations.

Comment: One commenter indicated it is inequitable to combine freestanding and hospital-based SNF data in computing the prospectively determined payment rates. The commenter stated that freestanding SNFs will be overpaid and that hospital-based SNFs will not receive adequate payment.

Response: Section 1888(d) of the Act does not provide for different payment rates for freestanding and hospital-based SNFS. We believe that if the congressional intent had been for different rates, the statute would have been worded in a manner similar to section 1888(a) of the Act, which establishes the bases for determining

cost limits for freestanding and hospital-based SNFs in urban and rural areas. If an SNF believes that it will not receive adequate payment under this optional system, it is not required to elect this payment system. Instead, it could continue to be reimbursed for its reasonable costs up to its cost limit with the possibility of obtaining an exception under the provisions of § 413.30 for its costs in excess of the limit.

Comment: Several commenters responded to our request for comments on alternative methodologies for determining payment amounts for ancillary services. One commenter stated that the best method for computing an ancillary payment rate system would be by developing reasonable charge payment screens, or, as an alternative, using an average per diem rate weighted on the basis of ancillary services provided. Another commenter urged the Secretary not to adopt a system of reasonable charges for the purpose of paying for ancillary services because such a system could not serve to reasonably cover the cost of providing services. Two commenters urged the Secretary to continue payment for ancillary services on a cost basis, until such time as another method could be developed.

Response: While we agree that the reasonable charge payment screen method would meet the statutory requirement for determining payment rates on the basis of reasonable charges, the data to establish such payment screens are unavailable. At the same time, we do not believe that using an average per diem rate weighted on the basis of ancillary services provided complies with the statutory requirement for determining a rate for ancillary services based on reasonable charges. We do not intend to adopt a reasonable charge system unless it can provide an equitable level of reimbursement. To date, we have not been able to develop a methodology that meets this requirement. Until we develop an equitable system based on reasonable charges, payment for ancillary services will continue on a cost basis. We have gathered data for certain ancillary therapies and are in the process of evaluating this information to determine if it would be appropriate for establishing a rate for ancillary services based on reasonable charges.

IV. Provisions of the Final Regulations

After careful consideration of public comments, no substantive changes have been made to the regulations. Thus, this final rule basically adopts the provisions of the proposed rule, with several minor clarifications that are discussed below.

In § 413.304(a), (b), and (c), we have changed ''may'' receive to ''is eligible to'' receive, in order to more clearly differentiate between the eligibility criteria and the rules governing election to be paid a prospectively determined payment rate under § 413.308.

We have amended § 413.308(b) by adding ''and the timely election requirements under 413.308(a)'' to clarify that the SNF must meet election, as well as eligibility, requirements. We have also changed ''determination'' to ''initial and final determinations'' for clarification.

We have amended § 413.308(c) by prohibiting an SNF from revoking its request once the intermediary has given initial determination of eligibility (as opposed to final determination, as stated in the proposed rule (59 FR 29578)). The time needed to make a final determination of the number of Medicare covered days in a cost reporting period can extend for many months due to various factors. Thus, we believe allowing an SNF to revoke its election until it receives a final approval would not conform with the intent of the statute.

We have added § 413.308(d), which clarifies the intermediary's authority to revoke the prospectively determined payment rate option if the intermediary determines that the SNF did not meet the eligibility criteria.

We have amended § 413.310(b) by adding the term ''for routine capital costs'' for clarification.

We have amended § 413.314 by adding the term ''and qualifies for such payment'' to clarify that in order to be paid a prospectively determined rate, an SNF must not only elect to be paid prospectively, but must qualify to do so.

V. Impact Statement

Unless we certify that a final rule will not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of the RFA, we consider SNFs as small entities.

In our analysis of the impact of the June 8, 1994 proposed rule, we noted that Medicare payments to SNFs comprise only about 5.3 percent of total SNF revenues and this rule will only have a small impact on those revenues. Moreover, the purpose of this rule is to ease the compliance burden for small entities, and we believe the rule will have a positive impact on small entities. We received no comments on these issues.

Also, section 1102(b) of the Act requires the Administrator to prepare a regulatory impact statement if a final rule has a significant economic impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds.

We have determined, and the Administrator certified, that this final rule will not have a significant effect on the operations of a substantial number of small entities or on small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

VI. Collection of Information Requirements

Sections 413.308 and 413.321 of this document contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). When OMB approves these provisions, we will publish a notice to that effect. The information collection requirements in § 413.321 concern the collection of financial data of skilled nursing facilities needed to prepare the applicable Medicare cost reports. The respondents who will provide the information include an estimated 1,250 SNFs. Public reporting burden for this collection of information is estimated to be 123,750 hours during the first 12-month period that the rule will be in effect.

The information collection requirements in § 413.308 concern notification of election of prospectively determined payment rates by each SNF to its intermediary for each cost reporting period and review by the SNF of the intermediary's determination. The respondents who will provide the information include the electing SNFs and their intermediaries. Public reporting burden for these requirements is estimated to be one half hour total for each request and review. The total for 1,250 SNFs and their intermediaries would be approximately 625 hours.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

A. The title of part 413 is amended to read as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

B. Part 413 is amended as follows:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Public Law 100–360 as amended by sec. 608(d)(3) of Public Law 100–485 (42 U.S.C. 1395ww (note)); sec. 101(c) of Public Law 101–234 (42 U.S.C. 1395ww (note)); and sec. 13503 of Public Law 103–66 (42 U.S.C. 1395ww (note)).

Subpart A—Introduction and General Rules

2. In § 413.1, a new paragraph (g) is added to read as follows:

§ 413.1 Introduction.

* * * * *

(g) *Prospectively determined payment rates for low Medicare volume SNFs.* Rules governing requests by SNFs for prospectively determined payment rates under section 1888(d) of the Act are set forth in subpart I of this part.

Subpart B—Accounting Records and Reports

3. In § 413.24 the introductory text of paragraph (d), and paragraph (h), are revised to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(d) *Cost finding methods.* After the close of the accounting period, providers must use one of the following methods of cost finding to determine the actual costs of services furnished during that period. (These provisions do not apply to SNFs that elect and qualify for prospectively determined payment rates under subpart I of this part for cost reporting periods beginning on or after October 1, 1986. For the special rules that are applicable to those SNFs, see § 413.321.) For cost reporting periods beginning after December 31, 1971, providers using the departmental method of cost apportionment must use the step-down method described in paragraph (d)(1) of this section or an ''other method'' described in paragraph (d)(2) of this section. For cost reporting periods beginning after December 31, 1971, providers using the combination method of cost apportionment must use the modified cost finding method described in paragraph (d)(3) of this section. Effective for cost reporting periods beginning on or after October 1, 1980, HHAs not based in hospitals or SNFs must use the step-down method described in paragraph (d)(1) of this section. (HHAs based in hospitals or SNFs must use the method applicable to the parent institution.) However, an HHA not based in a hospital or SNF that received less than $35,000 in Medicare payment for the immediately preceding cost reporting period, and for whom this payment represented less than 50 percent of the total operating cost of the agency, may use a simplified version of the step-down method, as specified in instructions for the cost report issued by HCFA.

* * * * *

(h) *Waiver of full or simplified cost reporting for low program utilization.* (1) If the provider has had low utilization of covered services by Medicare beneficiaries (as determined by the intermediary) and has received correspondingly low interim payments for the cost reporting period, the intermediary may waive a full cost report or the simplified cost report described in § 413.321 if it decides that it can determine, without a full or simplified report, the reasonable cost of covered services provided during that period.

(2) If a full or simplified cost report is waived, the provider must submit within the same time period required for full or simplified cost reports:

(i) The cost reporting forms prescribed by HCFA for this situation; and

(ii) Any other financial and statistical data the intermediary requires.

4. A new subpart I is added to read as follows:

Subpart I—Prospectively Determined Payment Rates for Skilled Nursing Facilities

Sec.

Subpart I—Prospectively Determined Payment Rates for Skilled Nursing Facilities

§ 413.300 Basis and scope.

(a) *Basis.* This subpart implements section 1888(d) of the Act, which provides for optional prospectively determined payment rates for qualified SNFs.

(b) *Scope.* This subpart sets forth the eligibility criteria an SNF must meet to qualify, the process governing election of prospectively determined payment rates, and the basis and methodology for determining prospectively determined payment rates.

§ 413.302 Definitions.

For purposes of this subpart—

Area wage level means the average wage per hour for all classifications of employees as reported by health care facilities within a specified area.

Census region means one of the 9 census divisions, comprising the 50 States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes.

Routine capital-related costs means the capital-related costs, allowable for Medicare purposes (as described in Subpart G of this Part), that are allocated to the SNF participating inpatient routine service cost center as reported on the Medicare cost report.

Routine operating costs means the cost of regular room, dietary, and nursing services, and minor medical and surgical supplies for which a separate charge is not customarily made. It does not include the costs of ancillary services, capital-related costs, or, where appropriate, return on equity.

Rural area means any area outside an urban area in a census region.

Urban area means a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Office of Management and Budget, or a New England county deemed to be an urban area, as listed in § 412.62(f)(1)(ii)(B) of this chapter.

§ 413.304 Eligibility for prospectively determined payment rates.

(a) *General rule.* An SNF is eligible to receive a prospectively determined payment rate for a cost reporting period if it had fewer than 1,500 Medicare covered inpatient days as reported on a Medicare cost report in its immediately

preceding cost reporting period. This criterion applies even if the SNF received a prospectively determined payment rate during the preceding cost reporting period.

(b) *Less than a full cost reporting period.* If the cost reporting period that precedes an SNF's request for prospectively determined payment is not a full cost reporting period, the SNF is eligible to receive prospectively determined payment rates only if the average daily Medicare census for the period (Medicare inpatient days divided by the total number of days in the cost reporting period) is not greater than 4.1.

(c) *Newly-participating SNFs.* An SNF is eligible to receive prospectively determined payment rates for its first cost reporting period for which it is approved to participate in Medicare.

§ 413.308 Rules governing election of prospectively determined payment rates.

(a) *Requirements.* An SNF must notify its intermediary at least 30 calendar days before the beginning of the cost reporting period for which it requests to receive such payment that it elects prospectively determined payment rates. A separate request must be made for each cost reporting period for which an SNF seeks prospectively determined payment. A newly participating SNF with no preceding cost reporting period must make its election within 30 days of its notification of approval to participate in Medicare.

(b) *Intermediary notice.* After evaluating an SNF's request for prospectively determined payment rates, the intermediary notifies the SNF in writing as to whether the SNF meets any of the eligibility criteria described in § 413.304 and the timely election requirements under § 413.308(a). The intermediary must notify the SNF of its initial and final determinations within 10 working days after it receives all the data necessary to make each determination. The intermediary's determination is limited to one cost reporting period.

(c) *Prohibition against revocation.* An SNF may not revoke its request after it has received the initial determination of eligibility from the intermediary and the cost reporting period has begun.

(d) *Revocation by intermediary.* If an SNF is given tentative approval to receive a prospectively determined payment rate, and, after the start of the applicable cost reporting period, the intermediary determines that the SNF does not meet the eligibility criteria, the intermediary must revoke the prospectively determined payment option.

§ 413.310 Basis of payment.

(a) *Method of payment.* Under the prospectively determined payment rate system, a qualified SNF receives a per diem payment of a predetermined rate for inpatient services furnished to Medicare beneficiaries. Each SNF's routine per diem payment rate is determined according to the methodology described in § 413.312 and is based on various components of SNF costs.

(b) *Payment in full.* The payment rate represents payment in full for routine services as described in § 413.314 (subject to applicable coinsurance as described in Subpart G of Part 409 of this title), and for routine capital costs. Payment is made in lieu of payment on a reasonable cost basis for routine services and for routine capital costs.

§ 413.312 Methodology for calculating rates.

(a) *Data used.* (1) To calculate the prospectively determined payment rates, HCFA uses:

(i) The SNF cost data that were used to develop the applicable routine service cost limits;

(ii) A wage index to adjust for area wage differences; and

(iii) The most recent projections of increases in the costs from the SNF market basket index.

(2) In the annual schedule of rates published in the **Federal Register** under the authority of § 413.320, HCFA announces the wage index and the annual percentage increases in the market basket used in the calculation of the rates.

(b) *Calculation of per diem rate.* (1) *Routine operating component of rate—* (i) *Adjusting cost report data.* The SNF market basket index is used to adjust the routine operating cost from the SNF cost report to reflect cost increases occurring between cost reporting periods represented in the data collected and the midpoint of the initial cost reporting period to which the payment rates apply.

(ii) *Calculating a per diem cost.* For each SNF, an adjusted routine operating per diem cost is computed by dividing the adjusted routine operating cost (see paragraph (b)(1)(i) of this section) by the SNF's total patient days.

(iii) *Adjusting for wage levels.* (A) The SNF's adjusted per diem routine operating cost calculated under paragraph (b)(1)(ii) of this section is then divided into labor-related and nonlabor-related portions.

(B) The labor-related portion is obtained by multiplying the SNF's adjusted per diem routine operating cost by a percentage that represents the labor-related portion of cost from the market basket. This percentage is published when the revised rates are published as described in § 413.320.

(C) The labor-related portion of each SNF's per diem cost is divided by the wage index applicable to the SNF's geographic location to arrive at the adjusted labor-related portion of routine cost.

(iv) *Group means.* SNFs are grouped by urban or rural location by census region. Separate means of adjusted labor-related and nonlabor routine operating costs for each SNF group are established in accordance with the SNF's region and urban or rural location. For each group, the mean labor-related and mean nonlabor-related per diem routine operating costs are multiplied by 105 percent.

(2) *Computation of routine capital-related cost.*

(i) The SNF routine capital-related cost for both direct and indirect capital costs allocated to routine services, as reported on the Medicare cost report, is obtained for each SNF in the data base.

(ii) For each SNF, the per diem capital-related cost is calculated by dividing the SNF's routine capital costs by its inpatient days.

(iii) SNFs are grouped by urban and rural location by census region, and mean per diem routine capital-related cost is determined for each group.

(iv) Each group mean per diem capital-related cost is multiplied by 105 percent.

(3) *Computation of return on owner's equity for services furnished before October 1, 1993.* (i) Each proprietary SNF's Medicare return on equity is obtained from its cost report and the portion attributable to the routine service cost is determined as described in § 413.157.

(ii) For each proprietary SNF, per diem return on equity is calculated by dividing the routine cost related return on equity determined under paragraph (b)(3)(i) of this section by the SNF's total Medicare inpatient days.

(iii) Separate group means are computed for per diem return on equity of proprietary SNFs, based on regional and urban or rural classification.

(iv) Each group mean is multiplied by 105 percent.

§ 413.314 Determining payment amounts: Routine per diem rate.

(a) *General rule.* An SNF that elects to be paid under the prospectively determined payment rate system, and qualifies for such payment, is paid a per diem rate for inpatient routine services. This rate is adjusted to reflect area wage differences and the cost reporting period

beginning date (if necessary) and is subject to the limitation specified in paragraph (d) of this section.

(b) *Per diem rate.* The prospectively determined payment rate for each urban and rural area in each census region is comprised of the following:

(1) A routine operating component, which is divided into:

(i) A labor-related portion adjusted by the appropriate wage index; and

(ii) A nonlabor-related portion.

(2) A routine capital-related cost portion.

(3) For proprietary SNFs only, a portion that is based on the return on owner's equity related to routine cost, applicable only for services furnished before October 1, 1993.

(c) *Adjustment for cost reporting period.* (1) If a facility has a cost reporting period beginning after the beginning of the Federal fiscal year, the intermediary increases the labor-related and nonlabor-related portions of the prospective payment rate that would otherwise apply to the SNF by an adjustment factor. Each factor represents the projected increase in the market basket index for a specific 12-month period. The factors are used to account for inflation in costs for cost reporting periods beginning after October 1. Adjustment factors are published in the annual notice of prospectively determined payment rates described in § 413.320.

(2) If a facility uses a cost reporting period that is not 12 months in duration, the intermediary must obtain a special adjustment factor from HCFA for the specific period.

(d) *Limitation of prospectively determined payment rate.* The per diem prospectively determined payment rate for an SNF, excluding capital-related costs and excluding return on equity for services furnished prior to October 1, 1993, may not exceed the individual SNF's routine service cost limit. Under § 413.30, the routine service cost limit is the limit determined without regard to exemptions, exceptions, or retroactive adjustments, and is the actual limit in effect when the provider elects to be paid a prospectively determined payment rate.

§ 413.316 Determining payment amounts: Ancillary services.

Ancillary services are paid on the basis of reasonable cost in accordance with section 1861(v)(1) of the Act and § 413.53.

§ 413.320 Publication of prospectively determined payment rates or amounts.

At least 90 days before the beginning of a Federal fiscal year to which revised prospectively determined payment rates are to be applied, HCFA publishes a notice in the **Federal Register**:

(a) Establishing the prospectively determined payment rates for routine services; and

(b) Explaining the basis on which the prospectively determined payment rates are calculated.

§ 413.321 Simplified cost report for SNFs.

SNFs electing to be paid under the prospectively determined payment rate system may file a simplified cost report. The cost report contains a simplified method of cost finding to be used in lieu of cost methods described in § 413.24(d). This method is specified in the instructions for Form HCFA–2540S, contained in sections 3000–3027.3 of Part 2 of the Provider Reimbursement Manual. This form may not be used by hospital-based SNFs or SNFs that are part of a health care complex. Those SNFs must file a cost report that reflects the shared services and administrative costs of the hospital and any other related facilities in the health care complex.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: June 30, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–17980 Filed 7–20–95; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

Frequency Allocations and Radio Treaty Matters; General Rules and Regulations

CFR Correction

In title 47 of the Code of Federal Regulations, parts 0 to 19, revised as of October 1, 1994, page 509 is removed and the following text, from § § 2.947 and 2.948, inadvertently removed, is reinstated.

§ 2.947 Measurement procedure.

* * * * *

(b) Information submitted pursuant to paragraph (a) of this section shall completely identify the specific standard or measurement procedure used.

(c) In the case of equipment requiring measurement procedures not specified in the references set forth in paragraphs (a)(1) and (2) of this section, the applicant shall submit a detailed description of the measurement procedures actually used.

(d) A listing of the test equipment used shall be submitted.

(e) If deemed necessary, the Commission may require additional information concerning the measurement procedures employed in obtaining the data submitted for equipment authorization purposes.

[42 FR 44987, Sept. 8, 1977, as amended at 44 FR 39181, July 5, 1979; 51 FR 12616, Apr. 14, 1986]

§ 2.948 Description of measurement facilities.

(a) Each party making measurements of equipment that is subject to an equipment authorization under part 15 or part 18 of this chapter, regardless of whether the measurements are filed with the Commission or kept on file by the party responsible for compliance of equipment marketed within the U.S. or its possessions, shall compile a description of the measurement facilities employed.

(1) If the measured equipment is subject to the verification procedure, the description of the measurement facilities shall be retained by the party responsible for verification of the equipment.

(i) If the equipment is verified through measurements performed by an independent laboratory, it is acceptable for the party responsible for verification of the equipment to rely upon the description of the measurement facilities retained by or placed on file with the Commission by that laboratory. In this situation, the party responsible for verification of the equipment is not required to retain a duplicate copy of the description of the measurement facilities.

(ii) If the equipment is verified based on measurements performed at the installation site of the equipment, no specific site calibration data is required. It is acceptable to retain the description of the measurement facilities at the site at which the measurements were performed.

(2) If the equipment is to be authorized by the Commission under the certification or the notification procedure, the description of the measurement facilities shall be filed with the Commission's laboratory in Columbia, Maryland. The data describing the measurement facilities need only be filed once but must be updated as changes are made to the measurement facilities or as otherwise described in this section. At least every three years, the organization responsible for filing the data with the Commission

shall certify that the data on file is current.

(b) The description shall contain the following information:

(1) Location of the test site.

(2) Physical description of the test site accompanied by photographs of size A4 (21 cm x 29.7 cm) or 8 x 10 inches (20.3 cm x 25.4 cm). Smaller photographs may be used if they clearly show the details of the test site and are mounted on full size sheets of paper.

(3) A drawing showing the dimensions of the site, physical layout of all supporting structures, and all structures within 5 times the distance between the measuring antenna and the device being measured.

(4) Description of structures used to support the device being measured and the test instrumentation.

(5) List of measuring equipment used.

(6) Information concerning the calibration of the measuring equipment, i.e., the date the equipment was last calibrated and how often the equipment is calibrated.

(7) If desired, a statement as to whether the test site is available to do measurement services for the public on a fee basis.

(8) A plot of site attenuation data.

(i) For a measurement facility that will be used for testing radiated emissions from a digital device on or after May 1, 1994, or for testing intentional and other unintentional radiators authorized under part 15 of the rules on or after June 1, 1995, the site attenuation data shall be taken pursuant to the procedures contained in Sections 5.4.6 through 5.5 of the following procedure:

* * * * *

BILLING CODE 1505–01–D

47 CFR Part 73

[MM Docket No. 95–34; RM–8600, RM–8654]

Radio Broadcasting Services; Rapid City and Lead, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Conway Broadcasting, allots Channel 222C at Rapid City, South Dakota, as the community's seventh local FM transmission service (RM–8600). *See* 60 FR 17048, April 4, 1995. We also, at the request of Associated Investors, Inc., allot the counterproposal for Channel 232C at Lead, South Dakota, as the community's first local aural transmission service (RM–8654). Channel 222C can be allotted to Rapid City in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 222C at Rapid City are North Latitude 44–04–50 and West Longitude 103–13–50. *See Supplementary Information, infra.*

DATES: Effective August 31, 1995. The window period for filing applications will open on August 31, 1995 and close on October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–34, adopted July 7, 1995, and released July 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Additionally, Channel 232C can be allotted to Lead, South Dakota, in compliance the Commission's minimum distance separation requirements with a site restriction of 51.7 kilometers (32.2 miles) northwest. The coordinates for Channel 232C at Lead are North Latitude 44–38–57 and West Longitude 104–15–47. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Channel 222C at Rapid City; and by adding Lead, Channel 232C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–17966 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–316; RM–8403, RM–8576]

Radio Broadcasting Services; Douglas, Tifton, and Unionville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 223C3 for Channel 223A at Douglas, Georgia, reallots Channel 223C3 from Douglas to Tifton, Georgia, and modifies the construction permit for Station WKZZ(FM) to specify Channel 223C3, Tifton, Georgia, as its community of license, at the request of Orchon Media, Inc. *See* 59 FR 01365, January 10, 1994. The allotment of Channel 223C3 to Tifton, Georgia, will provide that community with its first local transmission service, in accordance with Section 1.420(i) of the Commission's Rules. Channel 223C3 can be allotted to Tifton in compliance with the Commission's minimum distance separation requirements at petitioner's specified transmitter site. The coordinates for Channel 223C3 at Tifton, Georgia, are North Latitude 31–31–05 and West Longitude 83–20–43. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 93–316, adopted July 5, 1995, and released July 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 223A at Douglas, and by adding Tifton, Channel 223C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–17967 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 92–221; RM–8071]

Radio Broadcasting Services; Quincy and Susanville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 271A from Quincy to Susanville, California, and modifies the license of Olympic Broadcasters, Inc. for Station KQNC(FM) to specify operation on Channel 271C2, as requested, pursuant to the provisions of Section 1.420(g) and (i) of the Commission's Rules. *See* 57 FR 46368, October 2, 1992. The allotment of Channel 271C2 to Susanville will provide that community with its fourth local transmission facility without depriving Quincy of local aural transmission service. Coordinates used for Channel 271C2 at Susanville are 40–27–13 and 120–34–14. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 92–221, adopted July 5, 1995, and released July 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California is amended by removing Channel 271A at Quincy and adding Channel 271C2 at Susanville.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–17968 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–8; RM–8563]

Radio Broadcasting Services; Tompkinsville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Falcon Broadcasters, allots Channel 274A at Tompkinsville, Kentucky, as the community's second local FM transmission service. *See* 60 FR 5159, January 26, 1995. Channel 274A can be allotted at Tompkinsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) southeast to avoid short-spacings to vacant Channel 273C3, Crossville, Tennessee, Station WYCQ(FM), Channel 275C1, Shelbyville, Tennessee, and Station WTKY(FM), Channel 221A, Tompkinsville, Kentucky. The coordinates for Channel 274A at Tompkinsville are North Latitude 36–39–55 and West Longitude 85–35–51. With this action, this proceeding is terminated.

DATES: Effective August 31, 1995. The window period for filing applications will open on August 31, and close on October 2, 1995.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–8, adopted July 7, 1995, and released July 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Channel 274A at Tompkinsville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–17970 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–F

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1825

Revision to NASA FAR Supplement Coverage on Foreign Contracts

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

ACTION: Final rule.

SUMMARY: NASA is deleting the requirement that NASA Headquarters must be responsible for placing all NASA foreign contracts. The policy change will provide center procurement offices the authority to support their own technical offices for foreign requirements. This change supports the Headquarters focus of streamlining procurement operations by shifting operations to centers and placing authority with the activity that has the requirement. NASA is also deleting the requirement for centers to coordinate with Headquarters before awarding a contract for a designated-country end product as identified under the Trade Agreements Act of 1979. NASA is revising the policy to indicate when coordination with NASA Headquarters

is required and what information must be provided during the coordination process.

EFFECTIVE DATE: July 21, 1995.

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

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

SUPPLEMENTARY INFORMATION:

Background

This rule deletes the requirement for the responsibility of placing all of NASA's foreign contracts at NASA Headquarters. NASA policy had required that all foreign contracts be placed by the NASA Headquarters Acquisition Division within the Office of Procurement. The reason for centralizing the placement of foreign contracts was that some of the requirements for contract clauses imposed by U.S. laws conflict with statutory prohibitions imposed by foreign countries. The resolution of those issues could require close coordination among the NASA Headquarters External Relations Office, Office of General Counsel, the Office of Procurement, and the Department of State. However, the Headquarters Acquisition Division does not provide procurement support to other center project offices for their requirements. In a move to streamline the procurement process and provide efficient operations, the center procurement offices will support their own technical office for foreign requirements. Headquarters will maintain points of contact in the Offices of Procurement, General Counsel (Contracts), and External Relations for advice regarding contractual, international, and legal issues.

Availability of NASA FAR Supplement

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

Regulatory Flexibility Act

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

Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 1825

Government procurement.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR part 1825 is amended as follows:

1. The authority citation for 48 CFR part 1825 continues to read as follows:

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

PART 1825—FOREIGN CONTRACTS

1825.402–70 [Removed]

2. Section 1825.402–70 is removed.

3. Section 1825.7002 is revised to read as follows:

1825.7002 Policy

(a) Each contracting office (including NMO JPL) shall coordinate with the Headquarters Office of External Relations, International Relations Division (Code IR), before initiating any foreign contract acquisition if the acquisition is valued above $100,000 or involves—

(1) Importing or exporting goods or services from or to a country listed in 22 CFR 126.1(a) or (d) (Subchapter M, the International Traffic in Arms Regulations);

(2) Importing or exporting Defense Articles or Defense Services on the United States Munitions List at 22 CFR part 121 which require NASA to obtain a license from the State Department's Office of Defense Trade Controls;

(3) Exporting goods or services on the Commerce Control List at 15 CFR part 799 and that require NASA to obtain either a Special or an Individual Validated License;

(4) Importing and/or exporting goods or services from or to an entity listed in 15 CFR part 788, Supplements 1 through 4; or

(5) Exporting and/or importing of goods, technology, or services to or from any entity subject to transaction control, embargo, or sanctions pursuant to 31 CFR Chapter V. (b) All coordination required between NASA and the Departments of Commerce, State, and Treasury regarding foreign contract acquisitions shall be accomplished through Headquarters Code IR. The Headquarters designated points of contact for issues related to particular foreign procurement acquisition is Code HK in the Office of Procurement, Code GK in the Office of General Counsel, and Code IR in the Office of External Relations. Deviation requests shall be made in accordance with 48 CFR part 1801.471 and shall be coordinated prior to or during negotiations.

1825.7003 [Removed]

4. Section 1825.7003 is removed.

1825.7004 [Redesignated as 1825.7003]

5. Section 1825.7004 is redesignated as 1825.7003 and is revised to read as follows:

1825.7003 Procedure.

The Headquarters or field installation technical office requiring a foreign contract acquisition meeting any of the criteria listed in 1825.7002 shall submit the following information to Headquarters Code IR—

(a) The name of the foreign entity, the country or countries involved, and the purpose of the contract;

(b) The Space Act agreement(s) involved (pursuant to NMI 1050.9), if any;

(c) A description of the goods or services requiring prior written approval or the issuance of the license for their import or export from the Departments of Commerce, State, or Treasury; and

(d) The reason why the procurement is being placed with a foreign entity.

1825.7005 [Redesignated as 1825.7004]

6. Section 1825.7005 is redesignated as 1825.7004 and is revised to read as follows:

1825.7004 Assignment of contract administration for contracts performed in Canada.

(a) When, in accordance with FAR part 42, contract administration and related support service functions of the Defense Contract Management Command are desired for a contract to be performed in Canada (whether placed with Canadian commercial Corporation or directly with a Canadian firm), a letter or delegation shall be issued to—Defense Logistics Agency, DCMAO Canada, 275 Bank St., suite 200, Ottawa, Ontario, Canada K2P 2L6.

(b) So that DCMAO Canada can utilize the capabilities of Canadian Government agencies in performing contract administration services functions, each letter of delegation shall provide that DCMAO Canada is delegated authority to act as the contracting officer's representative, with power of further delegation for the performance of the requested services.

1825.7006 [Removed]

7. Section 1825.7006 is removed.

[FR Doc. 95–17863 Filed 7–20–95; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 950209041–5041–01; I.D. 071795B]

Groundfish of the Gulf of Alaska; Trawl Fishery for Shallow-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 shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal bycatch allowance of Pacific halibut apportioned to the shallow-water species fishery in the GOA has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 17, 1995, until 12 noon, A.l.t., October 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 shallow-water species fishery, which is defined at § 672.20(f)(1)(i)(B)(*1*), was apportioned 200 metric tons of Pacific halibut prohibited species catch (PSC) for the third season, the period July 1, 1995, through September 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 shallow-water species fishery in the GOA have caught the third seasonal allowance of Pacific halibut PSC apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the shallow-water species fishery by vessels using trawl gear in the GOA, except directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.''

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: July 17, 1995.

Richard W. Surdi,

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

[FR Doc. 95–17920 Filed 7–17–95; 4:31 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 071795A]

Groundfish of the Gulf of Alaska; Northern Rockfish in the Central Regulatory Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the northern rockfish total allowable catch (TAC) in the Central Regulatory Area.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), July 18, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Sloan, 907–581-2062.

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

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish TAC for the Central Regulatory Area was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8470, February 14, 1995) as 4,610 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the northern rockfish TAC in the Central Regulatory Area soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 4,210 mt, with consideration that 400 mt will be taken as incidental catch in directed fishing for other species in the Central Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area.

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

Classification

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

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

Dated: July 17, 1995.

Richard W. Surdi,

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

[FR Doc. 95–18010 Filed 7–18–95; 3:33 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950209041–5041–01; I.D. 071795E]

Groundfish of the Gulf of Alaska; Northern Rockfish in the Western Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch for northern rockfish in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 20, 1995, until 12 midnight, A.l.t., December 31, 1995.

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

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

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish total allowable catch (TAC) for the Western Regulatory Area of the GOA was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8470, February 14, 1995) as 640 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1995 TAC of northern rockfish in the Western Regulatory Area soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 576 mt after determining that 64 mt will be taken as incidental catch in directed fishing for other species in the Western Regulatory Area of the GOA. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area in the GOA.

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

Classification

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

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

Dated: July 17, 1995.

Richard W. Surdi,

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

[FR Doc. 95–18011 Filed 7–18–95; 3:33 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950206041–5041–01; I.D. 071795G]

Groundfish of the Gulf of Alaska; Pacific Ocean Perch in the Western Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch (POP) in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the total allowable catch (TAC) for POP in the Western Regulatory Area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 20, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Sloan, 907–581-2062.

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

In accordance with § 672.20(c)(1)(ii)(B), the TAC for POP in the Western Regulatory Area was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8470, February 14, 1995) as 1,014 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the TAC for POP in the Western Regulatory Area of the GOA soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 914 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in the Western Regulatory Area of the GOA. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for POP in the Western Regulatory Area of the GOA.

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

Classification

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

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

Dated: July 17, 1995.

Richard W. Surdi,

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

[FR Doc. 95–18012 Filed 7–18–95; 3:33 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 950209041–541–01; I.D. 071795D]

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 third 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.), July 21, 1995, until 12 noon, A.l.t., October 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 400 metric tons of Pacific halibut prohibited species catch for the third season, the period July 1, 1995, through September 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 third 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: July 17, 1995.

Richard W. Surdi,

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

[FR Doc. 95–18013 Filed 7–18–95; 3:33 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 071795C]

Groundfish of the Bering Sea and Aleutian Islands Area; Atka Mackerel in the Central Aleutian District

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the total allowable catch (TAC) of Atka mackerel in that area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 17, 1995, until 12 midnight, A.l.t., December 31, 1995.

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

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

In accordance with § 675.20(a)(7)(ii), the Atka mackerel TAC for the Central Aleutian District was established by the Final 1995 Harvest Specifications of Groundfish (60 FR 8479, February 14, 1995) as 50,000 metric tons (mt) as amended (60 FR 27488, May 24, 1995). The directed fishery for Atka mackerel was closed on April 25, 1995 (60 FR 20916, April 28, 1995). That closure was terminated on July 1, 1995 (60 FR 33150, June 27, 1995), upon determination that the 1995 TAC for Atka mackerel in the Central Aleutian District had not been reached.

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Atka mackerel TAC in the Central Aleutian District soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 49,500 mt after determining that 500 mt will be taken as incidental catch in directed fishing for other species in the Central Aleutian District. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District.

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

Classification

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

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

Dated: July 17, 1995.

Richard W. Surdi,

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

[FR Doc. 95–17921 Filed 7–17–95; 4:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 140
Friday, July 21, 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 ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Department of Energy Refrigerator and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: Today's document publishes a letter from Edward Schulak Equities, Inc. (ESE), requesting the Department of Energy (Department or DOE) to modify the refrigerator and refrigerator-freezer test procedure to allow testing the ''Energy Efficient Domestic Refrigeration System'' patented by ESE. The Department is soliciting comments, data, and information respecting the request.

DATES: The Department will accept comments, data, and information not later than August 21, 1995.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. FRIG–001, Mail Stop EE–431, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7574.

FOR FURTHER INFORMATION CONTACT:

Michael G. Raymond, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9611.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NICE), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NICE 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPACT), Public Law 102–486, 106 Stat. 2776, which requires the Department to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. The refrigerator and refrigerator-freezer test procedures appear at 10 CFR Part 430, Subpart B, Appendix A1.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. The waiver process allows the Assistant Secretary to temporarily waive test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data.

On March 14, 1995, ESE submitted a letter regarding the refrigerator test procedures. This letter was submitted as a ''Petition for Waiver'', but also stated that ''ESE recognizes that the Waiver process may not be the appropriate forum, and we would like this request to be considered in whatever forum DOE would consider appropriate * * *'' ESE has patented a device which operates by cooling the ambient air around the condenser coil. The device is a box placed around the coils, connected via small tubes to the outside of the house. The system also includes a movable barrier for selectively controlling the transfer of air to the box. The purpose of the invention is to reduce the energy consumption of the refrigerator. ESE's application seeks a ''waiver'' from the Department test procedure, because the energy consumption of a refrigerator equipped to allow the ingress of cool outside air over the condenser coils is not addressed. ESE has not submitted a modified test procedure to be used for rating its refrigerator modification. ESE states that the existing Department test procedure needs to be modified to allow the introduction of cool air to the refrigerator condenser coil. This refrigerator modification (specifically, the addition of tubes conveying outdoor air to the refrigerator) may cause increased infiltration of outdoor air to the building, which would affect the energy consumption of the building containing the refrigerator as well as the refrigerator itself.

The Department agrees that the current test procedure does not account for the total energy savings of the ESE refrigerator modification. Clearly, this invention would require modification to the test procedure, but, for two reasons, the ''Petition for Waiver'' process is not appropriate.

First, waivers to the test procedure are applicable when ''basic models'' have design features that require exceptional treatment and are applicable only to the model in question. No models are currently manufactured incorporating this invention, nor is the invention being produced for retrofitting on refrigerators.

Second, if the invention were put to use, the nature of the invention might require a fundamental change to the refrigerator test procedure because of the interaction of the invention with the building energy consumption.

The Department is publishing the letter from ESE, and, to facilitate understanding of the invention, a digest (Attachment A), which the Department has extracted from the patent. The patent is United States Patent Number 5,291,749, Energy Efficient Domestic Refrigeration System, granted to Edward R. Schulak, 567 Aspen, Birmingham, Michigan 48009, on March 8, 1994. The Department has identified several issues where comments are specifically requested. These issues are as follows, including, but not limited to:

- The effects of the invention on building energy consumption;
- Manufacturability of the invention;
- Retrofitting the invention into existing dwellings;

• Method of testing the invention to determine energy savings.

The Department solicits comments, data, and information respecting the letter.

By publishing this letter and requesting comments, the Department is not expressing a view as to the technical feasibility or economic justification of this mechanism as an energy saving device to be used with refrigerators and refrigerator-freezers.

Issued in Washington, DC, on July 13, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Edward Schulak Equities, Inc.

Christine Ervin, Assistant Secretary for Energy Efficiency and Renewable Energy.

March 14, 1995.

Mr. Michael J. McCabe, Director, Office of Codes and Standards, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

Ladies and Gentlemen: 1. *Petition for Waiver*—In accordance with 10 CFR, Part 430.27 this is a Petition for Waiver from the test procedure set forth in 10 CFR, Part 430, Subpart B, Appendix A–1, adopted August 10, 1982 and revised January 1, 1993 and for the use of an alternate test procedure described in paragraph 4 below. (Edward Schulak Equities, Inc. ''ESE'' recognizes that the Waiver process may not be the appropriate forum and we would like this request to be considered in whatever forum the Department of Energy ''DOE'' would consider appropriate, such as a Petition for Rule Making.) ESE has been granted U.S. Patent No. 5291749 which documents a unique technological breakthrough for which the required Appendix A–1 test procedure referenced above will not produce energy consumption results which correctly represent the enhanced energy savings possible and thereby the performance of this refrigerator.

2. *Background Information*—ESE was granted U.S. Patent No. 5291749 Titled: Energy Efficient Refrigeration System which documents a method of saving energy through increased efficiency in any commercially available refrigerator model. The company is familiar with DOE test procedures (specifically 10 CFR Part 430) and the FTC Energyguide labeling requirements. Further, the company engaged ETL Testing Laboratories ''ETL'' to independently confirm the validity of the energy savings possible with the above referenced patent, and to confirm the ineffectiveness of the existing DOE testing procedures to accurately produce energy consumption results with the above referenced patent (a copy of the ETL Reports No. 536692A, 538479B & 539826 are included as Exhibits A, B & C). In our opinion, the applicable DOE test procedure, which was designed for self contained units, has no provision to test a unit which transfers energy from cool external air into the unit's refrigeration cycle and thereby reducing the unit's overall energy consumption. The introduction of external cool air blown across the refrigerators condenser and compressor can be adapted to any rear or bottom mounted condenser model and has demonstrated (as confirmed by ETL) energy savings in excess of 25% of total power consumed by the unit.

3. *Specific Test Procedure Problems*—With the test conditions and procedures currently prescribed by DOE, energy consumption of a refrigerator equipped to allow the ingress of cool air over the condenser/compressor would not be addressed. The existing test procedures were written strictly for self contained models. A test procedure to standardize the energy savings achieved on models equipped to receive external cool air is currently not allowed and therefore the energy savings cannot be officially measured and documented.

As a result the dollar savings achieved through this technology can not be listed on the FTC Energyguide label and buyers can not be informed of the savings possible by purchasing a refrigerator engineered to utilize cool external air. It should be noted that there is already different test procedures established for measuring the energy consumption of unvented home heating equipment (Part 430, Subpart B, Appendix G) from that of vented home heating equipment (Part 430, Subpart B, Appendix O). With this new technological breakthrough there is now reason to consider a similar vented and unvented test procedure for refrigerators and freezers.

4. *Alternate Test Procedures*—At the present time ESE does not have a proposed alternate test method for refrigerator/freezer utilizing this technology. However, the work commissioned by ESE and completed by ETL provides a basis for developing a simple test procedure for refrigerator/freezers adapted to accept external cool air as proposed by ESE. The trials at ETL suggest that no existing DOE test conditions or procedures need be modified or deleted, but a provision needs to be added to allow the introduction of external air at specific temperature (°f) and airspeed (cfm) across the unit's condenser/compressor. The existing DOE test formulas and procedures would be unaltered. While the cool air would be introduced into and out of the unit, the unit is tested in full accordance with the existing 10 CFR, Part 430. For clarity, no test procedure need be altered or changed, but simply the conditions be expanded to allow cool air to be introduced in a consistent, repeatable manner to ensure that both the energy saved is measured in a consistent manner and that the savings can correspondingly be listed on the FTC Energyguide label.

5. *Public Policy Considerations*—Since innovation is an essential part of the Congressionally mandated energy conservation programs, it is in the public interest for DOE to facilitate introduction of new product technology like alternative air ducting which have the potential for saving energy by reducing the number of compressor cycles needed to keep a refrigerator/freezer cool.

6. *Manufacturers*—No existing appliance manufacturer in the United States market manufactures a model adapted to accept external cool air. In the discussions we have had with manufacturers and their consultants, they have clearly indicated that there is no advantage for them to utilize energy saving technology if it does qualify for the DOE Energuide Label. Manufacturers will not consider incorporating this new technology because the associated energy savings can not be quantified under the currently existing DOE Test conditions and procedures. Without an appropriate alternate test procedure, the savings can not be officially sanctioned and therefore are not allowed to be listed on an FTC Energyguide label. The adaptation that allows external cool air to flow over the condenser and compressor could apply to any existing model sold presently in the United States.

If additional information is required, please contact me at (810) 644–1500.

Respectively,

Edward Schulak,

President.

Enclosures:

Exhibit A—ETL Report No. 536692A
Exhibit B—ETL Report No. 5291749
Exhibit C—ETL Report No. 538479B

Attachment A

''* * * the present invention provides an energy transfer system for a household refrigeration appliance. The energy transfer system includes a compartment for enclosing the condenser, which is associated with the refrigerator, and a set of conduits for enabling the transfer of outside air into, through, and out of the compartment. The system also includes a movable barrier for selectively controlling the transfer of air through the compartment. In one form of the present invention, the system also includes a thermostatically actuated fan for forcing outside air into, through, and out of the compartment in response to a predetermined temperature.

''The set of conduits preferably includes a first conduit for enabling the transfer of outside air to the compartment, and a second conduit for enabling the transfer of air from the compartment to the outside environment. Each of these conduits are disposed such that they extend through an external wall of said household. To facilitate the convection flow of air, the outlet of one conduit is connected to the compartment at a location which is lower than an inlet connection of the other conduit.

''Referring to Figure 1, a perspective view of a household refrigeration appliance (10), in accordance with the present invention, is shown. More specifically, the household refrigeration appliance depicted in Figure 1 is a domestic refrigerator which has been retro-fitted with the energy transfer system (12), in accordance with the present invention. However, it should be understood that the principals [sic] of the present inventions are equally applicable to a domestic refrigerator, which has been constructed at the originating factory to include a built-in energy transfer system.

''As shown in Figure 1, the refrigerator (10) generally includes at least one door (14) across its front and a serpentine tube

condenser (16) mounted across its back. As is well known in the field, the condenser (16) is connected to the discharge end of a pump to compress a refrigerant fluid , such as freon, from a gaseous phase to a liquid phase. This process creates heat which must be removed in order for the refrigeration cycle to work.

''With this household refrigerator arrangement, the heat produced at the condenser (16) is simply released into the area of the home which surrounds the refrigerator. However, in accordance with the present invention, a compartment (24) is used to enclose the condenser (16). As shown in Figure 1, the compartment (24) may be comprised of a five-sided molded fiberglass shell, which is mounted to the exterior side of the refrigerator (10) where the condenser (16) is located. In this regard, the compartment (24) includes a flange (26) which extends around its periphery to enable the compartment to be secured to the refrigerator (10) over the condenser (16), such as with a plurality of spaced screws. However, it should be understood that the compartment may be comprised of other suitable materials, and may take other suitable shapes in the appropriate application. For example, with a factory built-in energy transfer system, the compartment (24) may be formed integrally with a side of the refrigerator (10), such that the consumer need not discern that the compartment is included as part of the refrigerator body. Additionally, the compartment (24) may be constructed such that it includes an insulative layer in order to more fully control the transfer of heat from the condenser (16).

''The energy transfer system (12) also includes one or more passageways for enabling the transfer of heat out of the compartment (24), and for selectively utilizing outside air in this process. Thus, for example, as shown in Figures 1 and 2, the energy transfer system (12) includes a first conduit (28), which enables cool air from outside of the home to enter the compartment (24), and a second conduit (30), which enables air from inside the compartment to be released outside of the home. In this regard, both of these figures show an exterior wall (32) of the household wall, and the conduits (28) and (30), constructed such that they are able to extend through this exterior wall. The conduits (28) and (30) may be made of any suitable material which is appropriate for this purpose (e.g., sheet metal or flexible insulated duct), and the conduits may be connected to the compartment in a variety of ways.

''It should also be noted that the first conduit (28) is connected to the compartment (24) at a location which is lower than that where the second conduit (30) is connected to the compartment. This arrangement is used to facilitate outside air from through the first conduit (28) into the compartment, through the compartment, and out of the second conduit (30), by heat convection. While the conduits (28, 30) are shown to be relatively straight pipes or tubes, it should be understood that other suitable shapes may be employed, depending upon such considerations as the available space and the distance between the refrigerator (10) and the exterior wall (32).

''Figures 1 and 2 also show the provision of a fan (34), which may be used to force the flow of outside air into, through, and out of the compartment (24). While the fan (34) is shown to be connected to the compartment (24) in a way which is separate from the connection of the conduits (28, 30) to the compartment, it is preferred that the fan be connected in-line with the conduit (28), either within the conduit or adjacent to its outlet into the compartment. Additionally, it is preferred that the fan (34) be a thermostatically actuated fan, so that its use may be carefully controlled to achieve the most energy efficient benefit.

''Additionally, as shown in Figures 1 and 2, the energy transfer system (12) also includes a movable barrier or wall, in one or both of the conduits (28, 30) to control the flow of air through the compartment (24). In one form of the present invention, this movable barrier is comprised of a butterfly valve (36), which may be used to prevent or enable the flow of outside air into the compartment via a butterfly valve disposed in one or both of the conduits (28, 30). For example, in the case of butterfly valve (36) disposed in the second conduit (30), the flow of outside air through the first conduit (28) could provide sufficient force to open the butterfly valve, and thereby, permit the escape of air from the compartment (24) through the second conduit.

''From the above, it should be understood that the energy transfer system (12) conveys energy in the form of cool outside air to the condenser (16), in order to reduce the energy of the refrigeration process.

''Thus, in accordance with the present invention, the fan (34) may be actuated when the outside air temperature drops to a predetermined threshold level (e.g., 37°C), as the energy efficiency achieved will be greater than the energy consumed by the fan. Alternatively, it should be appreciated that the refrigerator (10) may already include a fan which may be used to divert some air flow into the compartment (24) from the outside. The energy transfer system (12) may also include a thermostatically actuated valve, such as the valve which would enable ambient air from inside the household (e.g., 20°C.) to enter the compartment (24) when the outside air temperature is above a particular threshold level (e.g., 37°C). In this way, the compartment (24) will always be provided with a sufficient supply of air flow to cool the condenser (16).''

BILLING CODE 6450–01–P

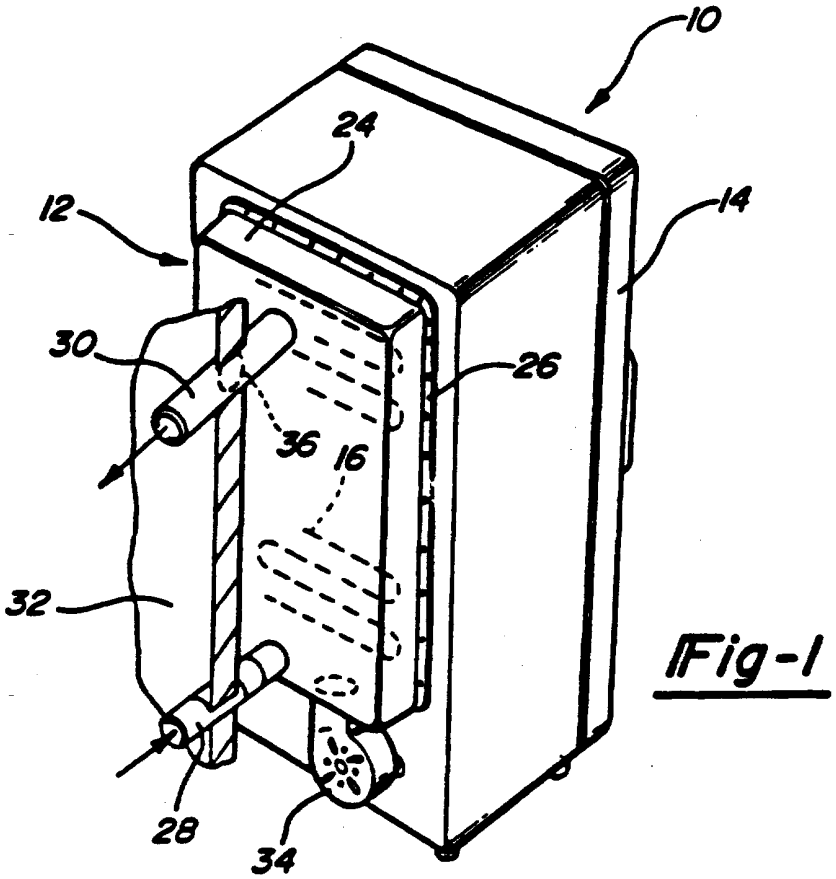

Fig-1

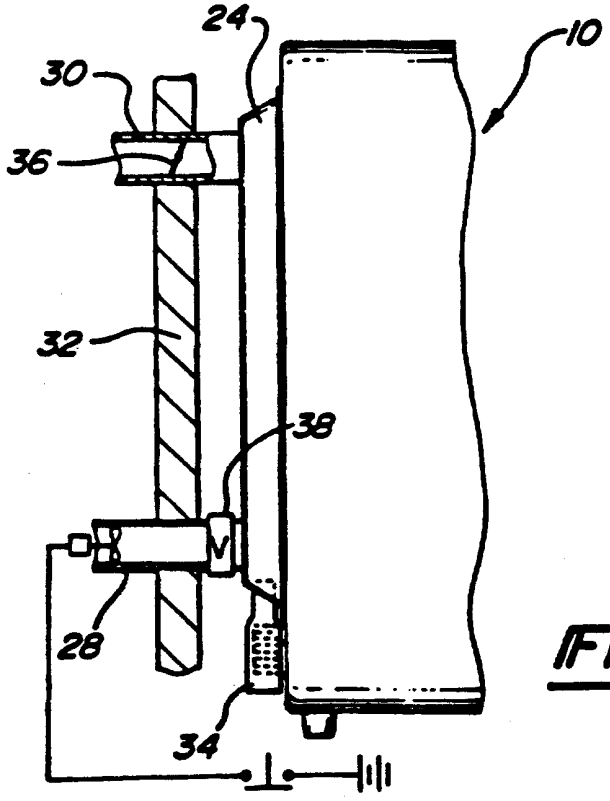

Fig-2

[FR Doc. 95–18037 Filed 7–20–95; 8:45 am]
BILLING CODE 6450–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–42–AD]

Airworthiness Directives; Raytheon Corporate Jets Model Hawker 1000 and BAe 125–1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 1000 and BAe 125–1000A series airplanes. This proposal would require an inspection to detect damage to an electrical cable loom (wire bundle). This proposal would also require tying back the loom with a cable tie to the cable loom support bracket, and repair, if necessary. This proposal is prompted by a report indicating that damage had occurred to the electrical cable loom. The actions specified by the proposed AD are intended to prevent incorrect fault displays in the cockpit and possible electrical systems failures, as a result of damage to the electrical cable loom.

DATES: Comments must be received by August 31, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–42–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 Raytheon Corporate Jets, Inc., Customer Support Department, Adams Field, P.O. Box 3356, Little Rock, Arkansas 72203. 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) 227–2148; fax (206) 227–1149.

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–42–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–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Raytheon Model Hawker 1000 and BAe 125–1000A series airplanes. The CAA advises that it has received a report of chafing damage to a certain electrical cable loom (wire bundle) behind the right-hand throttle box cover. Investigation has revealed that the chafing damage was caused by the flap selector spring strut when it was moved to the ''lift dump'' position. This condition, if not corrected, could result in incorrect fault displays in the cockpit and possible failure of the electrical systems.

Raytheon has issued Service Bulletin SB 24–313, dated December 19, 1994, which describes procedures for a one-time detailed visual inspection to detect chafing damage of the electrical cable loom located behind the right-hand throttle box cover. The service bulletin also describes verifying that the arrangement of the cable loom is correct, and provides procedures for tying back the loom with a cable tie to the cable loom support bracket, if no damaged cable is found. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

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 require a one-time detailed visual inspection to detect chafing damage of a certain electrical cable loom located behind the right-hand throttle box cover. The proposed AD would also require tying back the loom with a cable tie to the cable loom support bracket, if no damaged cable is found. The actions would be required to be accomplished in accordance with the service bulletin described previously. If any cable loom is damaged, the repair actions would be required to be accomplished in accordance with a method approved by the FAA.

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.

The FAA estimates that 19 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 $1,140, 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:

Raytheon Corporate Jets, Inc. (Formerly de Havilland; Hawker Siddeley; British Aerospace, plc): Docket 95–NM–42–AD.

Applicability: Model Hawker 1000 and BAe 125–1000A series airplanes; as listed in Raytheon Service Bulletin SB 24–313, dated December 19, 1994; 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 (b) of this AD 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 incorrect fault displays in the cockpit and possible electrical systems failures, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection to detect chafing damage of the electrical cable loom (wire bundle) behind the right-hand throttle box cover, and perform continuity and insulation checks and system functional tests, in accordance with Raytheon Service Bulletin SB 24–313, dated December 19, 1994.

(1) If no damage is found, prior to further flight, verify that the arrangement of the cable loom is correct and, using a cable tie, tie back the loom to the cable loom support bracket, in accordance with the service bulletin.

(2) If any damage is found, prior to further flight, repair the damaged loom, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) 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 July 17, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18030 Filed 7–20–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–67–AD]

Airworthiness Directives; Saab Model SAAB 340B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B airplanes. This proposal would require inspections to detect cracking of the beams located over the overwing emergency exits, and replacement of the beam with a new beam, if necessary. This proposal is prompted by a report that a batch of beams with cracking may have been installed on these airplanes. The actions specified by the proposed AD are intended to prevent cabin pressure leakage, consequent loss of cabin pressurization, and reduction of the load carrying capability of the associated structure, as a result of cracked beams.

DATES: Comments must be received by August 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–67–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1149.

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–67–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–67–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 340B airplanes. The LFV advises that one batch of beams on which cracking had initiated in the free flange of the beam may have been installed on these airplanes over the left- and right-hand overwing emergency exits. Such cracking could cause a stress failure of the beam. This condition, if not corrected, could result in cabin pressure leakage, consequent loss of cabin pressurization, and reduction of the load carrying capability of the associated structure.

Saab has issued Service Bulletin 340–53–047, dated December 14, 1994, which describes procedures for a one-time visual and dye penetrant inspection to detect cracking of the beams, having part numbers (P/N) 7253742–331/332, which are located over the left- and right-hand overwing emergency exits. This service bulletin permits further flight with beams that are cracked within certain limits. The service bulletin also describes procedures for replacement of the beam with a new beam if any cracking is detected. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) No. 1–065, dated December 20, 1994, in order to assure the continued airworthiness of these airplanes in Sweden.

This airplane model is manufactured in Sweden 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 LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a visual and dye penetrant inspection to detect cracking of the subject beams located over the left- and right-hand overwing emergency exits. The proposed AD also would require replacement of the beam with a new beam, if any cracking is detected. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that, unlike the procedures described in the referenced service bulletin, this proposed AD would not permit further flight with cracking detected in the beams. The FAA has determined that, due to the safety implications and consequences associated with such cracking, all beams that are found to be cracked must be replaced prior to further flight.

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.

The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours 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 $4,320, or $360 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:

SAAB Aircraft AB: Docket 95–NM–67–AD.

Applicability: Model 340B airplanes having serial numbers -324 through -341 inclusive, and having serial number -347; 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 (b) of this AD 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 cabin pressure leakage and consequent reduction of the load carrying capability of the associated structure, accomplish the following:

(a) Prior to the accumulation of 4,000 flight hours after the effective date of this AD, or within 18 months of the effective date of this AD, whichever occurs first: Perform a detailed visual and dye penetrant inspection to detect cracking of the beams located over the left-hand and right-hand emergency overwing exits, in accordance with Saab Service Bulletin 340–53–047, dated December 14, 1994.

(1) If no cracking is detected, no further action is required by this AD.

(2) If any cracking is detected, prior to further flight, replace the beam with a new one, in accordance with the service bulletin.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) 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 July 17, 1995.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–18031 Filed 7–20–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AGL–10]

Establishment of Class E Airspace; Pinecreek, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Piney Pinecreek Border Airport, Pinecreek, MN, to accommodate a Nondirectional Radio Beacon (NDB) to serve Runway 15/33. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before September 5, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AGL–10.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons

interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Piney Pinecreek Border Airport, Pinecreek, MN, to accommodate a Nondirectional Radio Beacon (NDB) to serve runway 15/33. Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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 proposed 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).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

AGL MN E5 Pinecreek, MN [New]
(lat. 48°59′54″ N, long. 95°58′45″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Piney Pinecreek Border Airport; excluding that area north of lat. 49°00′00″ N (Canadian-U.S. boundary).

* * * * *

Issued in Des Plaines, Illinois on July 10, 1995.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 95–18003 Filed 7–20–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 133, and 201

[Docket No. 92N–0334]

Labeling Declaration for FD&C Yellow No. 6 and FD&C Yellow No. 5; Amendment of Standard of Identity for Cheese Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require declaration of FD&C Yellow No. 6 in the ingredient list on the labels of butter, cheese, and ice cream, and on the labels of drug products administered to mucous membranes, when the color additive is used in these products. This proposal is based on reports in the literature of allergic-type reactions to FD&C Yellow No. 6. This proposed action will not have any effect on the permanent listing of FD&C Yellow No. 6. Also, FDA is proposing to amend the standard of identity for cold-pack and club cheese to make it conform to the requirements for listing FD&C Yellow No. 5 and FD&C Yellow No. 6 on the labels of food that contains these color additives. In addition, FDA is proposing to amend the regulation for FD&C Yellow No. 5 to provide for the use of abbreviated names for this color additive.

DATES: Written comments by October 4, 1995. The agency is proposing that any final rule they may issue based upon this proposal become effective 2 years after its publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 19, 1986 (51 FR 41765), FDA published a final rule that permanently listed FD&C Yellow No. 6 for use generally in food, drugs, and cosmetics. At that time, FDA adopted a requirement that the labeling of food and drug products that contain FD&C Yellow No. 6 specifically declare the presence of this color additive (hereafter referred to as the ''labeling requirement''). The effective date for this labeling requirement was to be November 19, 1987. The agency adopted the labeling requirement based on evidence in published reports of a relationship between FD&C Yellow No. 6 and allergic-type responses in some individuals.

FDA received several objections to the labeling requirement, including objections to its November 19, 1987, effective date; objections that questioned the validity of the scientific data that the agency used in assessing the need for the labeling requirement; and an objection that asserted that FDA had failed to give adequate notice of the possibility that it might adopt the labeling requirement. None of the objections requested a hearing.

In the **Federal Register** of June 8, 1987 (52 FR 21505), FDA confirmed the effective date of December 22, 1986, for the permanent listing of FD&C Yellow No. 6. In that document, the agency reaffirmed the labeling requirement, responded to the objections that it had

received on the November 19, 1986, final rule, and modified the rule in response to some of the objections. The major changes to the final rule that the agency made included extending the effective date of the labeling requirement to January 1, 1989, and modifying the language of the labeling requirement.

On October 5, 1987, the Certified Color Manufacturers Association (CCMA, now the International Association of Color Manufacturers) filed a petition in the United States Court of Appeals for the District of Columbia Circuit challenging that portion of the final rule that required that food labeling declare the presence of FD&C Yellow No. 6. The issues raised by CCMA were: (1) Whether FDA provided sufficient notice under the provisions of the Federal Food, Drug, and Cosmetic Act (the act), FDA regulations, the Administrative Procedure Act, and the Due Process Clause of the United States Constitution of its intent to adopt this requirement; and (2) whether this requirement is supported by the evidence.

On February 29, 1988, CCMA and FDA presented the Court of Appeals with a stipulation for the voluntary dismissal of the petition. In the stipulation, FDA agreed to ''issue a **Federal Register** notice withdrawing, as a final rule, the labeling requirement set forth at 52 FR 21505, June 8, 1987, and simultaneously publish as a proposed rule a labeling requirement for FD&C Yellow No. 6.'' This agreement did not affect the permanent listing of the color additive.

The agency never published a notice of withdrawal for the labeling requirement set forth in 1987 (52 FR 21505), but in the **Federal Register** of December 6, 1988 (53 FR 49138), the agency published a notice that stated that the labeling requirements for FD&C Yellow No. 6 would not be enforced until further notice.

In November of 1990, Congress passed, and the President signed, the Nutrition Labeling and Education Act (the 1990 amendments). The 1990 amendments amended section 403(i) of the act (21 U.S.C. 343(i)) to require the listing by name, as part of the list of ingredients, of color additives that are subject to certification under section 721(c) of the act (21 U.S.C. 379e(c)) (section 7 of the 1990 amendments). However, the 1990 amendments did not change section 403(k) of the act, which continues to provide that section 403(i) of the act, with respect to artificial coloring, does not apply in the case of butter, cheese, or ice cream.

In response to the 1990 amendments, FDA adopted § 101.22(k) (21 CFR 101.22(k)), which became effective on May 8, 1993. Section 101.22(k)(1) requires the label declaration of certifiable color additives added to foods, while § 101.22(k)(3) states that ''When a coloring has been added to butter, cheese, or ice cream, it need not be declared in the ingredient list unless such declaration is required by a regulation in part 73 or part 74 of this chapter to ensure safe conditions of use for the color additive.''

Because of literature reports of allergic-type reactions to FD&C Yellow No. 6, the agency is now proposing to require the declaration of FD&C Yellow No. 6 on labels for butter, cheese, and ice cream. Because of these reports, the agency is also proposing to require the declaration of FD&C Yellow No. 6 as an ingredient when it is used in drug products that are administered to mucous membranes.

II. Possible Allergic Reactions to FD&C Yellow No. 6

A. Review of Literature

FD&C Yellow No. 6, an azo dye, is defined in § 74.706(a)(1) and (b) (21 CFR 74.706(a)(1) and (b)). Uncertified FD&C Yellow No. 6 is commonly known as sunset yellow or sunset yellow FCF. Several published articles report allergic-type reactions to FD&C Yellow No. 6 (Refs. 1 through 12). One of these, a case study reported by Jenkins et al. (Ref. 1), was cited as evidence of the allergenic nature of FD&C Yellow No. 6 in a December 14, 1984, citizen petition concerning provisionally listed color additives. The agency, in denying that petition, noted that ''[T]he cited article is an isolated medical case report of an immunosuppressed, severely ill patient who was observed to experience gastrointestinal symptoms from sunset yellow powder (presumably uncertified FD&C Yellow No. 6) taken by mouth.'' The agency stated that it ''did not consider this single case report to provide a basis for concluding that FD&C Yellow No. 6 is an allergen.'' This information, however, together with the structural similarity of FD&C Yellow No. 6 to FD&C Yellow No. 5, which has also been reported to cause allergic-type reactions, prompted the agency to review all available information on allergic-type reactions related to the consumption of FD&C Yellow No. 6.

An early study reported evidence from dermal testing of sensitivity to FD&C Yellow No. 6 in a patient, but no response was elicited from administration of the color additive in a double-blind oral challenge test (Ref. 2). Subsequent studies suggested that patients could develop urticaria from consumption of azo dyes such as sunset yellow (Refs. 3 and 4). In another study, seven patients with allergic vascular purpura developed purpura after oral challenge with various azo dyes. One patient specifically reacted to sunset yellow (Ref. 5). Also, a case was reported of anaphylactic shock from exposure to FD&C Yellow No. 5 and FD&C Yellow No. 6 in soap used for a cleansing enema. The patient was reported to be sensitive to both color additives upon subsequent testing (Ref. 6). However, a double-blind clinical study of 43 asthmatic patients gave negative results for sunset yellow (Ref. 7).

The studies discussed above were questioned by interested parties in objections to the November 19, 1986, final rule with respect to their reliability as evidence that would justify label declaration of FD&C Yellow No. 6. The objections focused on the age of the studies and the procedures used by the clinicians. However, a more recent literature search has revealed other studies that were not discussed in the 1986 final rule.

In 1982, Ibero et al. (Ref. 8) published a study performed on 25 children with food allergy histories. To determine a cause for their symptoms, they were put through exhaustive tests, including: Case histories; cutaneous tests; determination of peripheral eosinophilia; determination of plasma immunoglobulins A, M, and G; determination of secretory immunoglobulin A in saliva; determination of total and specific immunoglobulin E against various food antigens; and being fed diets from which suspected food products were excluded. When these tests gave negative results, the patients were subjected to oral provocation with different food additives, including tartrazine and sunset yellow FCF after 48 hours of exclusion from their diets of dyes, benzoates, and salicylates. A lactose placebo was used in the study, but it is not clear whether the study was double-blinded.

Eight out of the 25 children challenged with sunset yellow reacted positively. Five of these had immediate positive reactions, and three had ''semi-retarded'' or ''retarded positive'' reactions (terminology used in the report). The agency is not considering the reported ''semi-retarded'' or ''retarded positive'' reactions as positive to sunset yellow because it is unclear what is meant by this terminology. Although 5 positive reactions out of 25 patients is a large percentage, the agency

considers this study to offer only limited evidence of the allergenicity of FD&C Yellow No. 6 because the report does not give complete details of the design of the study.

Sweatman et al. in 1986, published a case report of an 8-year-old girl with oro-facial granulomatosis (Ref. 9). This disease consists of swelling of the lips and face, frequently with vertical fissures in the lips and oral mucosal abnormalities. Oro-facial granulomatosis has been associated with sarcoidosis and Crohn's disease, but these diseases were ruled out in this case by clinical pathology tests. However, a double-blind challenge test produced a severe reaction to sunset yellow and carmoisine, another azo dye. The authors concluded that while these additives were clearly a cause of her condition, it was likely that other foods were also involved.

A 1986 study by Supramaniam and Warner focused on food additive intolerance in a group of children with a history of angioedema or urticaria (Ref. 10). The children underwent double-blind, placebo-controlled challenge testing with several food and color additives including sunset yellow. The additives or placebo were given in 4-hour intervals, and examinations for skin reactions, temperature changes, pulse and respiration rates, and peak expiratory flow rate were done at 15-minute intervals. A reaction was judged positive if either urticaria or angioedema occurred. Of the 36 children who were challenged with sunset yellow, 10 reacted positively. Although limited information is given in this paper, the study appears to have been well-conducted and provides support for the existence of hypersensitivity to FD&C Yellow No. 6 based on the percentages of children who reacted to sunset yellow. The investigators did not specify the amounts of the additives used in the testing protocol, only that smaller quantities of the additives were used than might be ingested in an estimated maximum daily intake.

In 1987, Murdoch et al. studied 24 patients with urticaria who were in remission on an additive-free diet by subjecting them to placebo-controlled, double-blind outpatient challenge testing with encapsulated food additives (Ref. 11). Three of the subjects gave positive responses to at least two separate challenges to azo dyes, with negative responses after placebo. These three subjects then underwent single-blind challenge testing in a hospital. One of the three subjects reacted to sunset yellow both in outpatient and hospital challenge tests. The subject experienced erythema and pruritus, with significant increases in plasma histamine levels in the hospital testing. The agency concludes that this study offers only limited evidence of the allergenicity of FD&C Yellow No. 6 because the hospital testing was only single-blinded and not placebo-controlled.

In 1989, Gross et al. reported the case of a physician who experienced severe abdominal pain and urticaria which required four hospitalizations within a 2-year period (Ref. 12). Small intestinal biopsies revealed chronic inflammation and eosinophils. FD&C Yellow No. 6 was the one common additive in all the foods and drugs that were suspected of causing the problem. The patient was challenged with FD&C Yellow No. 6 (using 8 milligram capsules) and encapsulated brown sugar as the placebo in a single-blind test. One capsule was given twice a day for 4 days. The patient developed abdominal cramps, hives, and nervousness following the administration of the FD&C Yellow No. 6, which was given first, but not after placebo. The patient subsequently underwent a placebo-controlled, double-blind challenge with the capsules given twice a day for 5 days. Placebo was administered first with no effect. However, severe abdominal cramps and marked fatigue occurred when FD&C Yellow No. 6 was administered. The authors concluded that the patient was suffering from allergic gastroenteritis from FD&C Yellow No. 6. This study was adequately conducted, and the results clearly document a case of adverse reaction to FD&C Yellow No. 6.

B. FDA's Tentative Conclusion Concerning Allergenicity of FD&C Yellow No. 6

In evaluating the reports described above, the agency recognizes that there are deficiencies in the conduct of some of the clinical studies (Ref. 13). However, in spite of the limitations of the studies, the agency tentatively concludes that the available evidence supports an association of FD&C Yellow No. 6 with allergic-type responses in susceptible individuals who may be exposed to this color additive in food, drugs, and cosmetics containing it. Therefore, under section 721(b)(3) of the act, the agency tentatively concludes that the label declaration of FD&C Yellow No. 6 is necessary as a condition of use to ensure a reasonable certainty of no harm from the prescribed use of the color additive for those susceptible individuals.

As discussed previously, § 101.22(k)(1) requires the label declaration of certifiable color additives, including FD&C Yellow No. 6, added to foods, while § 101.22(k)(3) exempts butter, cheese, or ice cream from this requirement unless the label declaration is required for safe conditions of use under part 73 or 74 (21 CFR part 73 or 74). Therefore, the agency is proposing to require that the labels of butter, cheese, and ice cream disclose when FD&C Yellow No. 6 is present in the food. Furthermore, the agency is proposing that drug products administered to mucous membranes that contain this color additive declare its presence in their labeling. This labeling requirement, if adopted, will serve to inform the public of the presence of FD&C Yellow No. 6 in these food and drug products and thus enable susceptible individuals to avoid it. The knowledge acquired through labeling of consumer products may also be of assistance when susceptible individuals patronize places, such as restaurants, where foods would not ordinarily be labeled.

Label declaration of specific color additives in cosmetics has been required since May 31, 1976. Thus, no action is required for cosmetics.

III. Label Declaration

A. Food

Section 721(b)(3) of the act provides that regulations for the listing of a color additive shall ''prescribe the conditions under which such additive may be safely employed for such use or uses (including but not limited to,* * * and directions or other labeling or packaging requirements for such additive).'' As reviewed above in this document, FD&C Yellow No. 6 has been reported to be associated with allergic-type responses in humans. Thus, the agency tentatively finds that the requirement for label declaration of the color additive in butter, cheese, or ice cream, which are currently exempt from such declaration under section 403(k) of the act, is justified.

Consumers who may be allergic to FD&C Yellow No. 6 are likely to be selective of the types of foods that they use and to read ingredient listings on food labels to avoid the allergic-type reactions to the color additive. The label declaration of FD&C Yellow No. 6 in human foods, except butter, cheese, and ice cream, is already required under § 101.22(k)(1). Accordingly, a label declaration of the presence of FD&C Yellow No. 6 in butter, cheese, and ice cream, whether added as the straight color additive, a mixture, or a lake, will enable persons who may be sensitive to FD&C Yellow No. 6 to avoid unwitting

exposure to this color additive. Therefore, the agency proposes to amend § 74.706 to require that the labeling of butter, cheese, and ice cream that contain FD&C Yellow No. 6 include a declaration of the presence of this color additive in the list of ingredients.

To minimize the economic impact of imposing this requirement, the agency is proposing that any final rule that may issue based upon this proposal become effective 2 years after its publication in the **Federal Register**. However, the agency solicits comments on whether a different effective date is appropriate.

B. Drugs

The use of color additives in drugs for human use is an old, accepted practice in the pharmaceutical industry. The use of color additives in drugs serves a necessary public health function because it permits drugs of identical size and shape to be distinguished. The distinguishing characteristic provided by the use of color additives is an important quality control tool in dispensing drugs to prevent mixups among otherwise similarly appearing products. The ability to distinguish among products is also important to persons taking more than one drug, especially to the patient who may think in terms of taking a drug of a particular color rather than by name of the drug. Color additives in drugs also assist in the identification of a drug in cases of accidental overdose.

Because yellow is a primary color, yellow color additives are widely used in coloring drug products. A substantial number of drug products would have to be reformulated if FD&C Yellow No. 6 were prohibited in drugs for human use. If prohibition of FD&C Yellow No. 6 from use in drugs were found to be necessary to protect the public health, the considerable time and effort necessary to reformulate drugs and the loss of product identification would be unimportant. However, on the basis of the available information concerning the nature and extent of possible intolerance to FD&C Yellow No. 6, the agency tentatively concludes that prohibiting all drug uses of FD&C Yellow No. 6 is not necessary, and that requiring labeling similar to that for foods will ensure the protection of patients who may be intolerant of FD&C Yellow No. 6.

Therefore, the agency is proposing to require label declaration of FD&C Yellow No. 6 when the color additive is present in prescription and over-the-counter (OTC) drug products administered orally, nasally, rectally, or vaginally. Other modes of exposure are not expected to trigger an allergic response. As discussed in section III.A. of this document, authority for this action is provided by section 721(b)(3) of the act, which states that the regulations for the listing of a color additive shall prescribe the conditions, including directions or other labeling or packaging requirements, under which the color additive may be safely used.

In the **Federal Register** of November 19, 1986 (51 FR 41765) and June 8, 1987 (52 FR 21505), FDA established §§ 74.1706(c)(2) and 201.20(c) (21 CFR 74.1706(c)(2) and 201.20(c)). These regulations provided requirements for the label declaration of FD&C Yellow No. 6 in certain drug products. As discussed in Section I of this document, in the **Federal Register** of December 6, 1988 (53 FR 49138), the agency issued a final rule that suspended §§ 74.706(d)(2), 74.1706(c)(2), and 201.20(c) pending further agency action. The agency is now proposing to adopt these regulations.

Under the proposed §§ 74.1706(c)(2) and 201.20(c), prescription and over-the-counter (OTC) drug products administered orally, nasally, rectally, or vaginally will be required to declare the presence of FD&C Yellow No. 6 by listing the color additive using the name FD&C Yellow No. 6. Topical or other externally applied drug products are not subject to these proposed regulations. If these proposed regulations are adopted, holders of approved applications for drug products containing FD&C Yellow No. 6 will be required to describe a labeling change to comply with the rule in accordance with § 314.70(d)(2) (21 CFR 314.70(d)(2)).

The agency is proposing that any final rule that may issue based upon this proposal become effective 2 years after its publication in the **Federal Register**, the same effective date proposed previously for labels of butter, cheese, and ice cream containing FD&C Yellow No. 6. Any drug product that is initially introduced or initially delivered for introduction into interstate commerce after the effective date would be misbranded under section 502 of the act (21 U.S.C. 352) if not in compliance with this proposed rule. However, the agency solicits comments on whether a different effective date is appropriate.

IV. Conforming Amendments

In the **Federal Register** of January 6, 1993 (58 FR 2891), the agency amended the cheese standards in part 133 (21 CFR part 133) to bring them into conformity with the requirements of the 1990 amendments. For the declaration of color additives, the amended cheese standards refer to the applicable sections of 21 CFR parts 101 and 130. However, in that document, the agency overlooked a provision in the standard of identity for cold-pack and club cheese (§ 133.123) that ''Artificial coloring need not be declared.'' The agency notes that this provision is redundant because § 101.22(k)(3) provides that artificial coloring added to butter, cheese, or ice cream need not be declared unless such declaration is required by a regulation in 21 CFR part 73 or 74. Furthermore, this provision may create confusion, because, under § 74.705(d)(2), FD&C Yellow No. 5 is required to be declared in the ingredient list on the labels of butter, cheese, and ice cream when the color additive is used in these products, and now the agency is proposing the same requirement for FD&C Yellow No. 6. Therefore, the agency is proposing to amend the standard of identity for cold-pack and club cheese in § 133.123 by removing paragraph (f)(1), that provides that artificial color need not be declared. With the removal of this provision, all of the cheese standards will be subject to the labeling provisions of § 130.3(e) and thus, the requirements of § 101.22 (c) and (k). Moreover, the agency notes that § 133.123(f)(2) unnecessarily repeats part of the first sentence of § 133.123(f). Therefore, to make this cheese standard consistent with the other cheese standards in part 133 and to eliminate this redundancy, the agency is also proposing to remove § 133.123(f)(2).

Also, the agency is proposing to revise the current labeling requirement for FD&C Yellow No. 5, which requires that foods that contain FD&C Yellow No. 5, including butter, cheese, and ice cream, declare the color additive as ''FD&C Yellow No. 5'' (21 CFR 74.705(d)(2)). The agency's new labeling requirements in § 101.22(k)(1) allow for the use of abbreviated names of certified color additives on food labels. For example, FD&C Yellow No. 5 may be declared either by its full name as ''FD&C Yellow No. 5'' or by an appropriate abbreviation, such as ''Yellow 5.'' Therefore, to prevent any confusion over label declaration of FD&C Yellow No. 5, the agency is proposing to revise § 74.705(d)(2) to state that the labels of butter, cheese, and ice cream that contain FD&C Yellow No. 5 shall declare the color additive in accordance with § 101.22(k)(1). The agency is also proposing to remove the statement ''Foods for human use'' in the current § 74.705(d)(2), because the 1990 amendments made it mandatory to declare the certified color additives on labels of foods for human use, other than butter, cheese, and ice cream, and

this requirement is already codified in § 101.22(k).

V. Conclusion

FDA has reviewed literature reports providing evidence that FD&C Yellow No. 6 may cause allergic-type responses in some individuals. Based on this evidence, the agency tentatively concludes that a label declaration of the color additive is necessary to ensure that its use is safe in butter, cheese, and ice cream and in drugs administered to mucous membranes. Accordingly, the agency is proposing to amend its regulations by adding §§ 74.706(d)(2), 74.1706(c)(2), and 201.20(c). In addition, the agency is proposing to amend the standard of identity for cold-pack and club cheese (§ 133.123) to make it conform to the requirement that FD&C Yellow No. 5 and FD&C Yellow No. 6 be declared on the label of this product. Also, the agency is proposing to amend the regulation for FD&C Yellow No. 5 (§ 74.705(d)(2)) to provide for the use of abbreviated names for this color additive.

VI. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Jenkins, P., R. Michelson, and P. A. Emerson, ''Adverse Drug Reaction to Sunset Yellow in Rifampicin/Isoniazid Tablet,'' Lancet, 385, 1982.

2. Chaffee, F.H., and G.A. Settipane, ''Asthma Caused by FD&C Approved Dyes,'' Journal of Allergy, 40:65–71, 1967.

3. Michaëlsson, G., and L. Juhlin, ''Urticaria Induced by Preservatives and Dye Additives in Food and Drugs,'' British Journal of Dermatology, 88:525–532, 1973.

4. Thune, P., and A. Granholt, ''Provocation Tests with Antiphlogistica and Food Additives in Recurrent Urticaria,'' Dermatologica, 151:360–367, 1975.

5. Michaëlsson, G., L. Pattersson, and L. Juhlin, ''Purpura Caused by Food and Drug Additives,'' Archives of Dermatology, 109:49–52, 1974.

6. Trautlein, J., and W.J. Mann, ''Anaphylactic Shock Caused by Yellow Dye (FD&C No. 5 and FD&C No. 6) in an Enema (Case Report),'' Annals of Allergy, 41:28–29, 1978.

7. Weber, R.W., M. Hoffman, D.A. Raine, and H. S. Nelson, ''Incidence of Bronchoconstriction Due to Aspirin, Azo Dyes, Non-Azo Dyes, and Preservatives in a Population of Perennial Asthmatics,'' Journal of Allergy and Clinical Immunology, 64:32–37, 1979.

8. Ibero, M., J.L. Eseverri, C. Barroso, and J. Botey, ''Dyes, Preservatives and Salicylates in the Induction of Food Intolerance and/or Hypersensitivity in Children,'' Allergologia et Immunopathologia, 10:263–268, 1982.

9. Sweatman, M.C., R. Tasker, J.O. Warner, M.M. Ferguson, and D.N. Mitchell, ''Oro-Facial Granulomatosis. Response to Elemental Diet and Provocation by Food Additives,'' Clinical Allergy, 16:331–338, 1986.

10. Supramaniam, G., and J.O. Warner, ''Artificial Food Additive Intolerance in Patients with Angio-oedema and Urticaria,'' Lancet, 907–909, 1986.

11. Murdoch, R.D., I. Pollock, E. Young, and M.H. Lessof, ''Food Additive-Induced Urticaria: Studies of Mediator Release During Provocation Tests,'' Journal of the Royal College of Physicians of London, 4:262–266, 1987.

12. Gross, P.A., K. Lance, R.J. Whitlock, and R.S. Blume, ''Additive Allergy: Allergic Gastroenteritis Due to Yellow DyeNo. 6,'' Annals of Internal Medicine, 111:87–88, 1989.

13. Center for Drug Evaluation and Research and Center for Food Safety and Applied Nutrition evaluations of the cited references.

VII. Environmental Impact Determination

The agency has determined under § 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as definedby the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because of the proposed 2-year compliance period, the incremental cost of this proposed regulation to manufacturers will be negligible. Therefore, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

A. Options Considered

1. No Action

Do not require label declaration of FD&C Yellow No. 6 in butter, cheese, and ice cream (i.e., maintain the status quo). FD&C Yellow No. 6, however, has been reported to be associated with allergic-type responses in some individuals. Thus, this option is not considered viable.

2. Require Label Declaration

The 1990 amendments mandated the inclusion of certified color additives in the ingredient list on the labels of foods. However, butter, cheese, and ice cream are exempt from this requirement under section 403(k) of the act. A substantial number of these products contain the color additive. To enable susceptible individuals to avoid possible allergic-type responses to FD&C Yellow No. 6 by alerting these individuals to the presence of the color additive in these products, the agency tentatively concludes that label declaration is necessary.

3. Delisting the Color Additive

The benefits of delisting the color additive would not warrant the costs. The color additive does not pose a significant health hazard to the general population but does cause allergic-type responses in certain susceptible individuals.

B. Economic Impact

1. Costs

a. *Costs to food industry.* The methodology for determining the costs of food labeling was described in detail in the regulatory impact analysis of the proposed rules to amend the food labeling regulations that published in the **Federal Register** of November 27, 1991 (56 FR 60856). However, the only food manufacturers affected by this regulation are those who produce butter, cheese, or ice cream, and who use FD&C Yellow No. 6 as an ingredient in one of these foods. The proposed effective date of this regulation is 2 years after its publication in the **Federal Register**. A 2-year compliance period generally provides sufficient time to permit use of current stocks of labeling thus minimizing inventory disposal costs. Also, most manufacturers of food products typically redesign labels within a 2-year period. Thus, food manufacturers will be able to incorporate mandated label changes with regularly scheduled revisions. Therefore, the incremental cost to food

manufacturers of this proposed regulation is expected to be negligible. Manufacturers could, of course, revise their labeling before the effective date of the regulation, and the agency encourages them to do so.

b. *Costs to the drug industry.* There are 815 currently marketed prescription and OTC drug products that are administered to mucous membranes (through oral, nasal, rectal or vaginal routes) and that contain FD&C Yellow No. 6. The cost of printing a drug label is estimated to be $258 per label. Therefore, the printing cost associated with this proposed regulation is estimated to be $210,270. FDA assumes that almost all existing label stocks for drug products will be depleted by the proposed effective date. Therefore, this proposed regulation will result in little or no inventory disposal costs. Administrative costs are estimated to be approximately $850 per firm. FDA estimates that approximately 113 firms will be affected by this regulation. Therefore, the administrative costs are estimated to be $96,050. The total one-time cost to the drug industry of declaring FD&C Yellow No. 6 on the label is $306,320.

2. Benefits

The benefit of requiring the labeling of FD&C Yellow No. 6 on butter, cheese, ice cream, and drug products administered to mucous membranes is ultimately the reduction of allergic-type reactions. FDA does not have information to quantify the benefits of this proposed regulation.

C. Summary

FDA has determined that this proposed rule is not a significant rule as defined by Executive Order 12866. The requirement to include FD&C Yellow No. 6 on the labels of butter, cheese, ice cream, and drug products administered to mucous membranes would result in a one-time cost of about $306,000.

IX. Comments

Interested persons may, on or before October 4, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs.

21 CFR Part 133

Cheese, Food grades and standards, Food labeling.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that the suspension of the effective date of 21 CFR 201.20(c) at 53 FR 49138, December 6, 1988, be removed and 21 CFR parts 74 and 133 be amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 74.705 is amended by revising paragraph (d)(2) to read as follows:

§ 74.705 FD&C Yellow No. 5.

* * * * *

(d) * * *

(2) Butter, cheese, and ice cream that contain FD&C Yellow No. 5 shall be labeled in accordance with § 101.22(k)(1) of this chapter.

* * * * *

3. Section 74.706 is amended by adding paragraph (d)(2) to read as follows:

§ 74.706 FD&C Yellow No. 6.

* * * * *

(d) * * *

(2) Butter, cheese, and ice cream that contain FD&C Yellow No. 6 shall be labeled in accordance with § 101.22(k)(1) of this chapter.

* * * * *

4. Section 74.1706 is amended by adding paragraph (c)(2) to read as follows:

§ 74.1706 FD&C Yellow No. 6.

* * * * *

(c) * * *

(2) The label of over-the-counter (OTC) and prescription drug products intended for human use and administered orally, nasally, rectally, or vaginally containing FD&C Yellow No. 6 shall specifically declare the presence of FD&C Yellow No. 6 by listing the color additive using the name FD&C Yellow No. 6. The labels of certain drug products subject to this labeling requirement that are also cosmetics, such as antibacterial mouthwashes and fluoride toothpastes, need not comply with this requirement provided they comply with the requirements of § 701.3 of this chapter.

* * * * *

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

5. The authority citation for 21 CFR part 133 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

§ 133.123 [Amended]

6. Section 133.123 *Cold-pack and club cheese* is amended by removing paragraphs (f)(1) and (f)(2).

Dated: July 6, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–17831 Filed 7–20–95; 8:45 am]

BILLING CODE 4160–01–P

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21 CFR Part 101

[Docket No. 93P–0448]

Food Labeling; Serving Sizes; Reference Amount for ''Salt, Salt Substitutes, Seasoning Salts (e.g., Garlic Salt)''

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the nutrition labeling regulations to change the reference amount customarily consumed per eating occasion for the food category ''salt, salt substitutes, seasoning salts (e.g., garlic salt)'' from a weight-based reference amount of 1 gram (g) to a volume-based reference amount of 1/4 teaspoon (tsp). This action is necessary to provide consistency with the agency's criteria for determining volumetric versus weight-based reference amounts for all product categories.

DATES: Written comments by October 4, 1995.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food

Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5662.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 19, 1990 (55 FR 29517 at 29532), as part of its effort to make the food label more useful and understandable to consumers, FDA proposed standard serving sizes for 159 food product categories based on the amount of food commonly consumed per eating occasion by persons 4 years of age or older. For the category ''salt, seasoning salt (e.g., garlic salt),'' the agency proposed a serving size of 1 g.

On November 8, 1990, however, before FDA could issue a final rule in the serving size rulemaking, Congress passed the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). This statute amended the Federal Food, Drug, and Cosmetic Act (the act) to require that virtually all foods bear nutrition information that is based on a serving size that reflects the amount of food that is customarily consumed and that is expressed in a common household measure that is appropriate to the food (section 403(q)(1)(A)(i) of the act (21 U.S.C. 343(q)(1)(A)(i))). The new law also directed FDA to adopt regulations that establish standards to define serving sizes (section 2(b)(1)(B) of the 1990 amendments (21 U.S.C. 343 note)).

In response to the new law, FDA, among other actions, issued a reproposal on serving sizes (56 FR 60394, November 27, 1991). In that reproposal, FDA carried forward the 1-g value for salt, although it called this amount the ''reference amount customarily consumed'' to reflect the requirements of the new law. FDA chose this amount based in part on its tentative determination to use weight-based amounts except in those instances in which it was demonstrably inappropriate to do so. The agency also included salt substitutes in the food category for salt and seasoning salts.

FDA received three comments on the proposed reference amount for salt (58 FR 2229 at 2260, January 6, 1993). One comment agreed with the proposed 1-g reference amount. The second comment also agreed with this amount, but it requested a voluntary declaration based on 1/4 tsp. The third comment argued that a weight-based reference amount was inappropriate for salt and requested that a volume-based reference amount be established. However, this comment did not include any data to support its assertions. Thus, in its final rule on serving sizes, FDA concluded that, in the absence of evidence to support a different reference amount, 1 g was the appropriate reference amount for ''salt, salt substitutes, seasoning salts (e.g., garlic salt)'' (58 FR 2229 at 2297).

II. The Petition

On November 19, 1993, FDA received a petition from Akzo Salt, Inc., that requested that FDA change the reference amount for salt from 1 g to a density-adjusted reference amount to be listed as ''x g-1/4 tsp.'' In support of its petition, the petitioner submitted the results of a consumer study of consumption patterns for salt and low-density salt and analytical data comparing the physical properties (including density) of salt and low-density salt. The company stated that the low-density salt product contains 33 percent less sodium by volume than regular table salt, that the consumer data demonstrate that equivalent volumes of low-density salt and regular salt are consumed, and that, therefore, consumers who use similar volumes of low-density and regular salt would consume 33 percent less sodium by using the low-density salt product rather than regular table salt. The company concluded that it should be permitted to communicate the benefits of its low-density salt product to consumers in a truthful manner, including making claims that would be prohibited under regulations established in response to the 1990 amendments.

On May 24, 1994, the petitioner amended its petition by submitting supplemental materials consisting of detailed information regarding the protocol, data tabulation, and results of the consumer study. The supplemental materials also included an independent evaluation of the results and conclusions of the consumer study.

On February 2, 1994, FDA received a comment that requested that the agency reject the petition and take no further action with regard to salt and salt products. The comment stated that amending the reference amount as requested by the petitioner would permit a comparative claim that would be contrary to the letter and intent of the 1990 amendments, which the comment claimed was to provide for comparison of two distinct foods and not two versions of the same food. The comment also argued that the proposed change would undermine the overall structure of FDA's regulation of nutrient content claims by acting as an incentive for manufacturers to extend their products with air or other nonnutritive substances in order to make claims. Finally, the comment asserted that the consumer study data submitted in the petition were incorrect and insufficient. On April 14, 1994, FDA received a response by the petitioner to the various arguments made in this comment.

FDA has carefully considered the information in this petition, the supplemental submission, and the comments. Based on its review, FDA finds that the petitioner has made a prima-facie case that a volume-based reference amount of 1/4 tsp for salt is more appropriate than the reference amount that FDA adopted in 1993 (Ref. 1). Therefore, in accordance with 21 CFR 10.30(e)(2)(i), FDA is granting the petition and proposing to change the reference amount for ''salt, salt substitutes, seasoning salts (e.g., garlic salt)'' from 1 g to 1/4 tsp. A discussion of the basis for the agency's action on the petition and for the proposed change in the reference amount follows.

III. Basis for the Proposed Action

A. The Appropriateness of a Weight-Based Reference Amount

As stated above, in the final rule on serving sizes, FDA adopted a weight-based reference amount of 1 g for ''salt, salt substitutes, seasoning salts (e.g., garlic salt)'' based on the agency's determination to use weight-based reference amounts unless such amounts were shown to be demonstrably inappropriate (58 FR 2229 at 2238) and on the lack of data showing that a weight-based reference amount was inappropriate for salt.

In the final rule on serving sizes, however, FDA outlined the circumstances in which a weight-based reference amount would not adequately reflect the amount of food customarily consumed per eating occasion (see comment 20 in 58 FR 2229 at 2238). The agency stated that weight-based reference amounts are inappropriate when foods within a product category vary considerably in density, that is, there is a density difference of 25 percent or more among the products in the category (see § 101.12(e) (21 CFR 101.12(e))), and the customarily consumed amounts for different products are more uniform when expressed in volume than in weight. As an example, the agency explained that, although the reference amount for the category ''Mixed Dishes: Measurable with cup, * * *'' is 1 cup, the g weights of different types of products within the category differ widely from about 160 g for seafood with vegetables without sauce to about 250 g for seafood stew. The use of a weight-based reference amount for this product category would result in serving sizes too large for some

products and too small for others. However, FDA found, based on consumption and usage data, that the volume amounts customarily consumed are similar for all products within this category. Thus, the agency concluded that a volume-based reference amount, rather than a weight-based reference amount, was appropriate for this class of foods.

Similarly, FDA changed the reference amount for peanut butter from ''30 g'' in the proposal to a volume-based amount of ''2 tbsp'' in the final rule in response to data demonstrating that there is a density variation of greater than 25 percent among peanut butters (whipped peanut butter is approximately 33 percent less dense than regular peanut butter), and that common cookbook usage of peanut butter is expressed by volume (e.g., tablespoon and cup) demonstrating that the amount customarily consumed in recipes that include peanut butter is measured by volume and not by weight (see comment 108 in the final rule for serving sizes, 58 FR 2229 at 2263). FDA concluded that the volume-based amount more accurately reflected the amount customarily consumed of the various types of peanut butter.

The agency does not agree with the comment that it received on the petition that a comparative claim between two versions of the same food (i.e., salt and low-density salt) would be contrary to the letter and intent of the 1990 amendments and would undermine FDA's regulation of nutrient content claims by encouraging the use of nonnutritive substances in order to make claims. In addition to providing for claims that compare similar kinds of foods (e.g., potato chips can serve as a reference food for potato chips) (see 21 CFR 101.13(j)), FDA provided procedures in § 101.12(e) to define reference amounts for aerated products to permit comparison of equal volumes of the aerated and nonaerated versions.

One purpose of the 1990 amendments was to help consumers maintain healthy dietary practices (see e.g., sections 403(q)(1) and (r)(2)(A)(ii)(II) of the act). In comment 138, in the final rule for serving sizes (58 FR 2229 at 2271), FDA specifically stated:

> In light of the current dietary guidelines for reducing fat and calorie intakes * * *, FDA acknowledges that it is desirable to have a wide selection of low fat and low calorie foods available to consumers. Some consumers may benefit from having such aerated foods if they consume an equivalent volume of aerated food as they would have the regular food, e.g., two instead of three aerated waffles.

Similarly, given the dietary guidelines recommending that people use salt and sodium in moderation (Refs. 3 through 5), if consumers consume equivalent volumes of low-density salt and regular salt, then it would be beneficial for consumers to have a variety of products available that are permitted to compare the sodium content of different types of salt and salt substitute products.

FDA has reviewed the materials in the petition and in the supplemental submission and comments. Based on this review, the agency concludes that the petitioner has made a prima-facie showing that a weight-based reference amount is not appropriate for salt. First, the density difference between low-density salt and conventional table salt is reported in the petition to be 33 percent, which supports that the densities of the foods in the salt products category vary considerably. Second, the consumer research data included in the supplemental submission provide evidence that similar volumes, rather than similar weights, of low- and high-density salt products are customarily consumed. For these reasons, FDA has tentatively determined that a weight-based reference amount is not appropriate for salt products. Therefore, FDA is proposing to make a change in the reference amount for salt.

B. Relief Requested of a Density-Adjusted Reference Amount

The petition requested a density-adjusted reference amount for the product category ''salt, salt substitutes, seasoning salts (e.g., garlic salt).'' However, there are several difficulties with using a density-adjusted reference amount for this product category.

FDA discussed density-adjusted reference amounts in the context of aerated products, specifically waffles, in comment 138 in the final rule on serving sizes (58 FR 2229 at 2271). In response to requests for a volumetric reference amount for waffles, the agency noted that the wide variability in size and shape of discrete products like waffles makes it difficult to establish a volume for the aerated version that would be equivalent to the reference amount of the regular counterpart. Consequently, FDA permitted manufacturers to use density-adjusted reference amounts for aerated products in discrete units that vary widely in size and shape. The manufacturer adjusts for the difference in density of the aerated food relative to the regular product. For example, if the density of the aerated food is 30 percent lower than the density of the regular product, the density-adjusted reference amount for the aerated food would be 30 percent less than the reference amount of the regular counterpart.

FDA tentatively finds that a density-adjusted reference amount would not be appropriate for salt products for three reasons. First, unlike waffles, which are sold and consumed in discrete units, salt products are bulk products that are measured by volume. An aerated reference amount (i.e., density adjusted) is not appropriate, because there are no discrete units such that the regular and the aerated versions are ''the same in size, shape, and volume'' (see § 101.12(e)(1)).

Second, applying the rounding specifications for aerated reference amounts leads to an absurdity for products with small reference amounts like salt. Section 101.12(e) of FDA's regulations specifies that the reference amount for an aerated food ''shall be rounded to the nearest 5-g increment.'' The current reference amount for salt is 1 g. Thus, if a density-adjusted reference amount were calculated for a low-density salt product, it would be 0.67 g. Rounding 0.67 g to the nearest 5-g increment gives 0 g which is an illogical and nonsensical result.

Finally, § 101.12(e) requires that the product bear a descriptive term indicating that air has been incorporated (e.g., whipped, aerated). Describing the product as ''whipped salt'' or ''aerated salt'' is apt to be confusing to consumers given that the appearance and the consistency of the two salts are very similar. For these reasons, the concept of a density-adjusted reference amount for salt products is not appropriate.

C. Consideration of a Volumetric Reference Amount

The petition and supplemental submission support a volumetric reference amount for salt and salt products. As noted in the petition, in the proposed and final serving sizes regulations (56 FR 60394 and 58 FR 2229), FDA discussed its approach to products like salt that can easily be measured volumetrically. As discussed above, the agency considers volumetric reference amounts appropriate when three criteria are met: (1) The product can easily be measured volumetrically, (2) the densities vary widely, and (3) the amount customarily consumed is more uniform when expressed as a volume rather than a weight.

First, in order for a volumetric reference amount to be appropriate, the product must be a bulk product that can be measured volumetrically, such as peanut butter or fluids (final rule for serving sizes, comment 20, 58 FR 2229 at 2238 and comment 108, at 2263). Salt

and salt products can be measured volumetrically.

Second, there must be a significant difference in the densities (i.e., 25 percent or more) of the different forms of the product such that a range of densities are represented within the product category (see discussions on aerated products in § 101.12(e) and peanut butter (58 FR 2229 at 2263)). FDA considers the 33-percent density difference reported for low-density salt relative to conventional table salt to be significant and to justify a finding that the densities of different products within the category vary widely.

Third, the amount customarily consumed must be more uniform when expressed volumetrically than when expressed gravimetrically (56 FR 60394 at 60406 and 58 FR 2229 at 2238). There must be some indication or likelihood that similar volumes, rather than similar weights, of both low- and high-density products within the same product category are customarily consumed. The evidence must show that the amount that people consume is more consistent when expressed in volumetric terms than when expressed in terms of weight.

In the final serving sizes regulation (58 FR 2229 at 2260), FDA rejected a request for a volume-based reference amount for salt products, even though salt products are measured volumetrically. The agency observed that ''[t]he comment did not submit any data to support that regular salt and the low-density salt are consumed equally on a volume basis.'' FDA noted that like sugar, salt is used as a flavoring agent to attain a given level of saltiness. Thus, the agency stated, the reference amount for a salt substitute, such as a low-density salt product, should be the amount necessary to provide a salty taste equivalent to one reference amount of salt.

In reconsidering whether the amounts consumed of the various products within the salt category are more similar when expressed in terms of volume than in terms of weight, FDA looked at the quality of the supporting evidence submitted, including the study design, the results, and the conclusions. The agency evaluated the data provided in the supplementary submission and determined: (1) That the consumer research conducted on behalf of the petitioner is a reasonably well controlled experiment that meets scientific standards for testing household salt consumption differences due to two types of salt; and (2) that the result supports, but does not prove, the hypothesis that salt is used on a volumetric rather than on a weight basis (Ref. 2). Thus, FDA has tentatively concluded that the data provide evidence that similar volumes, rather than similar weights, of low- and high-density products are customarily consumed.

Section 101.12(e), which applies to discrete products like waffles, requires that the aerated version bear a descriptive term indicating that air has been incorporated (e.g., whipped, aerated). Some product categories that have volumetric reference amounts contain products whose common or usual names clearly indicate that air has been incorporated into the product (e.g., whipped peanut butter, whipped dessert topping). Some products in other product categories with volumetric reference amounts do not bear such descriptive terms (e.g., pudding, ice cream). Given these differences, FDA is requesting comments on whether low-density salt products should be required to clearly identify that they contain more air than conventional salt products. It is the agency's opinion that terms such as ''whipped salt'' or ''aerated salt'' are apt to be confusing to consumers. Therefore, FDA is also requesting comments on what kind of descriptive terms would be clear and nonmisleading for consumers.

IV. Conclusion

FDA has determined that volumetric reference amounts are appropriate when: (1) Products are bulk products that can be measured volumetrically; (2) there are significant differences in densities among the products within a product category such that a range of densities are represented within the particular product category; and (3) the amount customarily consumed is more uniform when expressed volumetrically, that is, there is some indication or likelihood that similar volumes, rather than similar weights, of both low- and high-density products within the same product category are customarily consumed.

The petition and supplemental submission contain information that evidences that similar volumes rather than similar weights of low- and high-density salt products are customarily consumed. Because the products within the category can be measured volumetrically, and the density difference among products within the same product category appear to be significant, FDA has concluded that the petitioner has made a prima facie showing that it is appropriate for the reference amount for salt and salt products to be expressed on a volumetric rather than a gravimetric (i.e., weight) basis.

FDA is proposing to change the reference amount for salt andsalt products from 1 g to 1/4 tsp and to solicit public comment on the proposed change. The agency selected 1/4 tsp because it is the volumetric amount that most closely reflects the amount customarily consumed. It is the smallest volumetric amount permitted in the regulations (21 CFR 101.9(b)(5)(i)). In addition, the 1/4 tsp reference amount will permit comparison with herbs and spices which also have a reference amount of 1/4 tsp.

V. Comments

Interested persons may, on or before October 4, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because there is no cost to industry, the agency certifies that the proposed rule will not have a significant

economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Letter from Dykstra, Gary, to Wayne H. Matelski, dated July 11, 1995.

(2) Brenda Derby, Consumer Studies Branch, Division of Market Studies, memo to file, June 20, 1994.

(3) U.S. Department of Agriculture and Department of Health and Human Services (DHHS), ''Nutrition and Your Health: Dietary Guidelines for Americans,'' 3d ed., U.S. Government Printing Office, Washington, DC, 1990.

(4) DHHS, ''The Surgeon General's Report on Nutrition and Health,'' U.S. Government Printing Office, Washington, DC, 1988.

(5) National Research Council, ''Diet and Health. Implications for Reducing Chronic Disease Risk,'' National Academy Press, Washington, DC, 1989.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.12 is amended in paragraph (b), Table 2, under the ''Miscellaneous category'' by revising the entry for ''Salt, salt substitutes, seasoning salts (e.g., garlic salt)'' under the headings ''Reference amount'' and ''Label statement'' to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

* * * * *

(b) * * *

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1, 2, 3, 4]

Product category	Reference amount	Label statement[5]
* * *	* *	* *
Miscellaneous category:		
* * *	* *	* *
Salt, salt substitutes, seasoning salts (e.g., garlic salt).	1/4 tsp	1/4 tsp (———g); ——— piece(s) (———g) for discrete pieces (e.g., individually packaged products)
* * *	* *	* *

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; dry, fresh, and frozen pasta) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term ''piece'' is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement column that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

* * * * *

Dated: June 26, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–17919 Filed 7–20–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[IA–10–95]

RIN 1545–AT23

Methods of Signing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the signing of returns, statements, or other documents. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by October 19, 1995. Outlines of topics to be discussed at the public hearing scheduled for November 2, 1995, must be received by October 12, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IA–10–95), 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 (IA–10–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Celia Gabrysh (202) 622–4940; concerning submissions and the hearing, Christine Vasquez, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 6695 and the Procedure and Administration Regulations (26 CFR part 301) relating to section 6061. The temporary regulations relate to signing returns, statements, or other documents.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 2, 1995, at 10 am in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by October 19, 1995 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 12, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Celia Gabrysh, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—[AMENDED]

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

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

Par. 2. In § 1.6695–1, the first sentence of paragraph (b)(1) is revised to read as follows:

§ 1.6695–1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

[The text of the proposed amendment to paragraph (b)(1) is the same as the text of § 1.6695–1T(b) published elsewhere in this issue of the **Federal Register**].

PART 301—[AMENDED]

Par. 3. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 301.6061–1 also issued under 26 U.S.C. 6061.

Par. 4. Section 301.6061–1 is amended as follows:

1. The text in § 301.6061–1 is designated as paragraph (a) and a heading is added.

2. Paragraphs (b) and (c) are added. The additions read as follows:

§ 301.6061–1 Signing of returns and other documents.

(a) *In general.* * * *

[The text of proposed paragraphs (b) and (c) is the same as the text of § 301.6061–1T (b) and (c) published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–18054 Filed 7–20–95; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Regulatory Program

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

ACTION: Withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consisted of revisions to and additions of rules pertaining to definitions, designation of lands unsuitable for surface coal mining, permit application information, minimum requirements for reclamation and operation plans in permit applications, review and approval or denial of permit applications and permit conditions, performance standards for coal exploration, and performance standards for surface coal mining operations.

DATES: This withdrawal is effective July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Acting Director, Albuquerque Field Office, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: By letter dated April 13, 1995, New Mexico submitted a proposed amendment to its program (administrative record No. NM–739) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the program amendment requirements at 30 CFR 931.16 (c), (d), and (f) through (s) (56 FR 67520, December 31, 1991, and 58 FR 65907, December 17, 1993) and at its own initiative. The provisions of the New Mexico rules that New Mexico proposed to revise were: Coal Surface Mining Commission (CSMC) Rule 80–1–5, definitions; CSMC rule 80–1–4–15, designation of lands unsuitable for surface coal mining; CSMC Rule 80–1–7–14, permit application information; CSMC Rule 80–1–9–39, minimum requirements for reclamation and operation plans in permit applications: CSMC Rules 80–1–11–17, 80–1–11–19, 80–1–11–20, and 80–1–11–29, review of and approval or denial of permit applications and permit conditions; CSMC Rule 80–1–19–15, performance standards for coal exploration; and CSMC Rules 80–1–20–41 and 49, 80–1–20–82, 80–1–20–89, 80–1–20–93, 80–1–20–97, 80–1–20–116 and 117, 80–1–20–124, and 80–1–20–150, performance standards for surface coal mining operations.

OSM announced receipt of the proposed amendment in the May 5, 1995 **Federal Register** (60 FR 22332), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–741). Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 5, 1995.

During its review of the amendment, OSM identified concerns related to several provisions of New Mexico's proposed rules. OSM notified New Mexico of these concerns by letter dated June 22, 1995 (administrative record No. NM–747.

In response to OSM's concerns, New Mexico, by letter dated July 6, 1995, requested that the proposed amendment be withdrawn (administrative record No. NM–752). New Mexico indicated that its program requires that substantial rule revisions be reviewed and approved by the CSMC at a public hearing prior to submission to OSM. new Mexico stated that it would resubmit the amendment at a later date for approval as part of the New Mexico program after revisions have been approved by the CSMC.

Therefore, the proposed amendment announced in the May 5, 1995, publication of the **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 331

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 14, 1995.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–17987 Filed 7–20–95; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–100, RM–8509; RM–8549; RM–8550]

Radio Broadcasting Services; Okmulgee, Nowata, Pawhuska, Bartlesville, Bixby, Oklahoma, Rogers, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, order to show cause.

SUMMARY: The Commission requests comments on an Order to Show Cause issued to KRIG, Inc. as to why its license for Station KRIG, Nowata, Oklahoma, should not be modified to specify operation on Channel 285A.

DATES: Comments must be filed on or before August 31, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order to Show Cause*, MM Docket No. 94–100, adopted July 6, 1995, and released July 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–17964 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–109, RM–8665]

Radio Broadcasting Services; Coolidge and Gilbert, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Rainbow Broadcasting, Inc. licensee of KAZR(FM), Coolidge, Arizona, proposing the substitution of Channel 280C2 for Channel 280A at Coolidge, Arizona and the reallotment of Channel 280C2 from Coolidge to Gilbert, Arizona and the modification of its license to specify Gilbert as its community of license, in accordance with Section 1.420(i) of the Commission's Rules. Channel 280C2 can be allotted to Gilbert in compliance with the Commission's minimum distance separation requirements with a site restriction of 28.8 kilometers (17.9 miles) east of the community. The coordinates for Channel 280C2 at Gilbert are North Latitude 33–22–37 and West Longitude 111–28–55.

DATES: Comments must be filed on or before September 7, 1995, and reply comments on or before September 22, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry A. Friedman, Semmes, Bowen & Semmes, Suite 900, 1025 Connecticut Avenue, NW., Washington, DC 20036 (Attorney for Petitioner).

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 776–1660.

SUPPLEMENTARY INFORMATION: This a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–109, adopted June 30, 1995, and released July 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., Room 246, or 2100, M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–17965 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–279; RM–8368, RM–8385]

Radio Broadcasting Services; Cal-Nev-Ari, Boulder City, Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; denial of.

SUMMARY: The Commission denied the request of Richard W. Myers to allot Channel 285A to Cal-Nev-Ari, NV, as its first local aural broadcast service. *See* 58 FR 61671, November 22, 1993. The Commission found that Cal-Nev-Ari does not qualify as a community for allotment purposes. The Commission also denied the counterproposal of Rock ''N'' Roll, Inc., which requested the modification of Boulder City, NV, Station KRRI's license to specify Channel 286C2 instead of its present Channel 288C2, and the modification of Las Vegas Station KRBO's license to specify Channel 289C2 rather than its present Channel 286C2 in an attempt to alleviate interference within Station KRRI's predicted 70 dBu and 60 dBu contours. Stations are protected from interference only to the extent that stations are separated from one another in accordance with Section 73.207 of the Commission's rules and operate in accordance with the powers prescribed in their construction permit/license. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 93–279, adopted July 10, 1995, and released July 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–17969 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 92–299; RM–8049]

Television Broadcasting Services; Appleton, New London and Suring, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the petition for rule making filed by Wisconsin Voice of Christian Youth, Inc., to reallot television Channel 14– from Suring to New London, Wisconsin, pursuant to Section 1.420(i) of the Commission's Rules. *See* 58 FR 4393, January 14, 1993. We find that there is insufficient basis to warrant the removal of the sole local television broadcast service at Suring, Wisconsin. We further find that petitioner failed to demonstrate compelling reasons for waiver of the television freeze order. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 92–299, adopted July 7, 1995, and released July 17, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–17963 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[I.D. 071395A]

Reef Fish Fishery of the Gulf of Mexico; Amendment 8

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council has submitted Amendment 8 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public.

DATES: Written comments must be received on or before September 15, 1995.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 8, which includes an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis, and for copies of a minority report submitted by three members of the Council, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609-2486, FAX: 813-225-7015.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), requires that a council-prepared amendment to a fishery management plan be submitted to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon receiving an amendment, immediately publish a document that the amendment is available for public review and comment.

Amendment 8 to the FMP proposes a limited entry program for the commercial red snapper sector of the reef fish fishery in the Gulf of Mexico. Initial participants in the limited entry program would receive shares of the commercial quota of red snapper based on specified criteria. The percentage shares of the commercial quota would be equivalent to individual transferable quotas.

The Director, Southeast Region, NMFS, based on a preliminary evaluation of Amendment 8, has disapproved three amendment measures because the measures were determined to be inconsistent with the Magnuson Act and other applicable law. The disapproved measures included: (1) An appeals panel to consider hardships in determining eligibility for and amount of initial shares; (2) a provision that up to 3 percent of the initial commercial allocation of red snapper be set aside for resolving hardship cases; and (3) a restriction that transfer of shares be limited to ''natural persons,'' thus precluding corporations or partnerships from obtaining shares.

A minority report signed by three Council members raised various objections to Amendment 8.

Proposed regulations to implement those measures of Amendment 8 that were not disapproved based on the preliminary evaluation are scheduled for publication within 15 days.

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

Dated: July 17, 1995.

Richard W. Surdi,

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

[FR Doc. 95–17922 Filed 7–17–95; 4:31 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 140
Friday, July 21, 1995

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

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Square Butte Creek Watershed, Supplemental Watershed Work Plan No. 3, Morton and Oliver Counties, ND

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Soil Conservation Service Regulations (7 CFR Part 650); the U.S. Department of Agriculture, Natural Resources Conservation Service, gives notice that an environmental impact statement is not being prepared for the Square Butte Creek Watershed, Supplemental Watershed Work Plan No. 3, Morton and Oliver Counties, North Dakota.

FOR FURTHER INFORMATION CONTACT: Ronnie L. Clark, State Conservationist, Natural Resources Conservation Service, 220 E. Rosser Avenue, P.O. Box 1458, Bismarck, ND, 58502–1458, 701–250–4421.

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

Project purposes associated with Square Butte Creek Watershed, Supplemental Watershed Work Plan No. 3, are flood prevention, watershed protection, and recreation. A single purpose floodwater retarding dam will be changed to a multiple purpose dam (flood prevention and recreation) in order to provide water-based recreational facilities. The recommended plan for improvement includes an earthfill dam (918,000 cubic yards) with a concrete principal spillway and a grassed auxiliary spillway. The plan also includes associated land treatment measures on 4,100 acres of cropland and rangeland, and development of agricultural waste management systems above the dam site.

Installation of the proposed reservoir and recreational facilities will provide outdoor recreational opportunities for an estimated 69,900 visitors annually. Planned facilities consist of a boat dock and launching area (ramp), a swimming beach with a changing house, picnic areas with playground equipment and shelters, modern and primitive camping sites, walking trails, adequate parking for each activity, and other necessary facilities including a sewage dump station for recreational vehicles.

The Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ronald D. Sando, Assistant State Conservationist for Water Resources, at 701–250–4441. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10–904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Ronnie L. Clark,

State Conservationist.

[FR Doc. 95–17952 Filed 7–20–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

Form Number(s): BE–82.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 3,200 hours.

Number of Respondents: 425.

Avg Hours Per Response: 7.5 hours.

Needs and Uses: This survey will obtain annual sample data on financial services transactions between U.S. financial services providers and unaffiliated foreign persons, beginning with 1995. The data from the survey will update the data collected in the quinquennial BE–80 benchmark survey of such services. The information gathered is needed, among other purposes, to support U.S. trade policy initiatives, including trade negotiations, and to compile the U.S. balance of payments and the national income and product accoutns.

Affected Public: Businesses or other for–profit organizations, not–for–profit institutions, farms, state and local government agencies, or other institutions engaging in international financial services transactions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Agency: Bureau of Economic Analysis.

Title: Annual Survey of U.S. Direct Investment Abroad.

Form Number(s): BE–11.

Agency Approval Number: 0608–0053.

Type of Request: Revision of a currently approved collection.

Burden: 88,9400 hours.

Number of Respondents: 1,325.

Avg Hours Per Response: 67 hours.

Needs and Uses: This survey is a sample survey that obtains financial and operating data covering the overall operations of U.S. parent companies and their foreign affiliates. The survey is mandated by Congress to provide a factual framework for addressing the concerns of policymakers and the general public about the effects of U.S.

direct investment abroad on the U.S. and foreign economies. The sample data are used to carry forward similar data reported in the BE–10 benchmark survey in order to derive universe estimates in nonbenchmark years. The data are needed to measure the economic significance of U.S. direct investment abraod, measure changes in such investment, and assess its impact.

Affected Public: Businesses or other for–profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 17, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–17959 Filed 7–20–95; 8:45 am]

BILLING CODE 3510–CW–F

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Minority Business Development Agency.

Title: Automated Business Enterprise Locator System (ABELS).

Form Number(s): None.

Agency Approval Number: 0640–0002.

Type of Request: Revision of a currently approved collection.

Burden: 2,500 hours.

Number of Respondents: 100.

Avg Hours Per Response: 15 minutes.

Needs and Uses: This form is used to collect information on business firms capable of and interested in selling goods and services to government agencies and other business. This information is referred to procurement officials interested in extending contract bidding opportunities to minority firms.

Affected Public: Businesses or other for–profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Agency: Economic Development Administration.

Title: Simplification and Streamlining of Regulations of the Economic Development Administration.

Form Number(s): None.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 176,400 hours.

Number of Respondents: 700.

Avg Hours Per Response: 240 hours.

Needs and Uses: The information requested is to enable EDA to review and approve statutorily mandated requirements concerning redevelopment areas and Overall Economic Development Programs (OEDPs).

Affected Public: Not–for–profit institutions and State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–18049 Filed 7–20–95; 8:45 am]

BILLING CODE 3510–CW–F

National Oceanic and Atmospheric Administration

[I.D. 071195A]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on August 15–17, 1995.

ADDRESSES: Both meetings will be held at the Conference Room of the Caravelle Hotel, in St. Croix, U.S.V.I.

Council Address: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577.

FOR FURTHER INFORMATION CONTACT: Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council; telephone: (809) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 86th regular public meeting to discuss the Third Amendment to the Reef Fish Fishery Management Plan, among other topics.

The Council will convene on August 16, 1995, from 9:00 a.m. until 5:00 p.m., and on August 17, from 9:00 a.m. until approximately 12:00 noon.

The Administrative Committee will meet on August 15, from 2:00 p.m. until 5:00 p.m., to discuss administrative matters regarding Council operations.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or requests for sign language interpretation and/or other auxiliary aids please contact Mr. Miguel A. Rolón, (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 14, 1995.

Richard W. Surdi,

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

[FR Doc. 95–17929 Filed 7–20–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071395D]

New England Fishery Management Council and Mid-Atlantic Fishery Management Council; Informational Meetings

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

ACTION: Notice of informational public meetings.

SUMMARY: The New England and Mid-Atlantic Fishery Management Councils (Councils) will hold a series of informational public meetings to discuss bycatch limits for monkfish taken in the mixed species trawl, sink gillnet, sea scallop dredge and trawl,

whiting, squid and scup trawl, summer flounder trawl and possibly other fisheries that operate in the Gulf of Maine, Southern New England, and Mid-Atlantic regions. The Councils are also asking for recommendations on a minimum mesh size for the monkfish limited access fishery.

DATES: The meetings will be held on July 19, 1995, at 10:00 a.m., on July 25, 1995, at 10:00 a.m., and on August 3, 1995, at 10:00 a.m.

ADDRESSES: The July 19 meeting will be held at the Days Inn, 332 Milliken Boulevard, Fall River, MA; telephone: (508) 676–1991. The July 25 meeting will be held at the Ocean Place Hilton, One Ocean Boulevard, Long Branch, NJ; telephone: (908) 571–4000. The August 3 meeting will be held at the Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH; telephone: (603) 431–6774.

Council addresses: New England Fishery Management Council; 5 Broadway; Saugus, MA 01906–1097; Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 18804–6790.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council; telephone: (617) 231–0422. David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to develop industry consensus on possible trip limits for monkfish taken in a number of Gulf of Maine, Southern New England, and Mid-Atlantic fisheries. The intent of the measures would be to allow fishermen to land monkfish catches when they target other species and to prevent large numbers of fishermen from specifically targeting monkfish. The Councils also are asking fishermen involved in the trawl and gillnet fisheries to recommend a minimum mesh size for fishermen targeting monkfish. A larger mesh size would, in certain areas, limit the catch and discards of groundfish and could provide greater selectivity benefits for monkfish.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids for the July 25 and August 3 meetings should be directed to Douglas G. Marshall or David R. Keifer (see **ADDRESSES**), at least 5 days prior to the meeting date.

Dated: July 14, 1995.

Richard W. Surdi,

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

[FR Doc. 95–17930 Filed 7–20–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071295C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 87th meeting.

DATES: The meeting will be held on August 8–10, 1995. The Council's standing committees will meet on August 8, beginning at 8:00 a.m. The full Council will meet on August 9–10, beginning at 8:30 a.m., each day. The Council will solicit testimony on alternative management measures for the Northwestern Hawaiian Islands (NWHI) lobster fishery at approximately 1:30 p.m. on August 9. Also, on August 9, the Council will hold a Fishermen's Forum at approximately 3:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Makaha, Waianae, Oahu, HI.

Council Address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Council will discuss and may take action on the following agenda items:

1. Reports from the islands;
2. Reports from fishery agencies and organizations;
3. Enforcement, including U.S. Coast Guard activities, NMFS activities, proposed 5th Vessel Monitoring Systems Technical Consultation;
4. Status of violations;
5. Crustaceans, including experimental fishing, alternative management program for the (NWHI) (NOTE: public comments on this item will be treated as testimony at a public hearing), analysis of model for quota setting procedures, and time table for Amendment 9;
6. Fishermen's Forum;
7. Ecosystems and Habitat, including longline observer quarterly report, requested Section 7 consultation regarding turtles and longlines, Hawaiian Islands humpback whale sanctuary, and coral reef management planning considerations;
8. Pelagics, including longline permit actions, observer program funding, 1994 annual report and recommendations, longline quarterly report, bycatch, request for single council designation, and draft Biological and Oceanographic Research Plan;
9. Bottomfish, including summary of 1994 annual report and recommendations, State of Hawaii initiative to manage main Hawaiian islands bottomfish, implementation of new NWHI catch reporting system, and reconsideration of NWHI management system;
10. Native Rights and Indigenous Fishing, including Magnuson Act amendments, State of Hawaii Molokai subsistence fishing demonstration project, and Kahoolawe ocean management plan;
11. Program Planning, including joint Interior-Commerce working group to review Federal policy in the Pacific, Magnuson Act Reauthorization, S-K proposals, Western Pacific Fisheries Information Network, Council public education outreach program;
12. Administrative Matters; and
13. Other business as required.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: July 14, 1995.

Richard W. Surdi,

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

[FR Doc. 95–18009 Filed 7–20–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071395C]

Endangered Species; Permits

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

ACTION: Notice of receipt of a permit application, and issuance of permit 971 and modification 1 to permit 930.

SUMMARY: Notice is hereby given that Dr. David Owens of Texas A&M University (P531A) has applied in due form for a permit to take listed sea turtles for the purpose of scientific research. Notice is also given that NMFS issued Permit

Number 971 to Dr. James Spotila and Dr. Pamela Plotkin of Drexel University (P521A), and Modification 1 to Permit 930 to Dr. Peter Lutz of FL Atlantic University (P567), to take listed sea turtles for the purpose of scientific research, subject to certain conditions set forth therein.

ADDRESSES: The applications, permits, and related documents are available for review 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, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250) for Permit 971 only; or

Director, Southeast Region, NMFS, NOAA 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141) for Permit 930 and Application P531A.

Written comments, or requests for a public hearing on Application P531A should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

DATES: Written comments or requests for a public hearing on Application P531A must be received on or before August 21, 1995.].

SUPPLEMENTARY INFORMATION: Dr. David Owens of Texas A&M University (P531A) requests a permit 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 to study the habitat use, migratory patterns, and feeding biology of listed loggerhead and hawksbill sea turtles in the Flower Garden Banks National Marine Sanctuary and Stetson Bank, TX. The applicant proposes to capture 20 loggerheads and 4 hawksbills, attach them with satellite and radio transmitters, take blood samples, and conduct ultrasonography and lavage.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on Application P531A 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 the application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Notice was published on June 2, 1995 (60 FR 28777) that an application had been filed by Dr. James Spotila and Dr. Pamela Plotkin of Drexel University (P521A), to take listed sea turtles. The applicants requested authorization to conduct research on 60 loggerhead, 60 Kemp's ridley, and 20 green sea turtles in Delaware Bay, in 1995 only. The turtles would be captured in a tangle net, examined, measured, photographed, tagged, have blood samples taken, and be held for the collection of fecal samples. The applicants requested the authority for one sea turtle mortality. The purpose of the research is to provide a preliminary assessment of seasonal distribution and population structure of sea turtles in Delaware Bay, and to evaluate the relationship between distribution patterns, resource distribution, and environmental factors. On July 14, 1995, NMFS issued Permit 971 to authorize the above research.

On July 5, 1995, NMFS issued Modification 1 to Permit 930 to Dr. Peter Lutz of FL Atlantic University (P567), authorizing satellite and sonic tagging of turtles in Port St. Lucie Harbor, FL.

Issuance of Permit 971 and Modification 1 to Permit 930, as required by the ESA, was based on a finding that such permit and modification: (1) Were applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of the permit and modification, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 17, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–17931 Filed 7–20–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 071795F]

Marine Mammals and Endangered Species Permits

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

ACTION: Issuance of a Scientific Research Permit (P557D).

SUMMARY: Notice is hereby given that the Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics (Dr. Christopher W. Clark, Principal Investigators), 9500 Gilman Drive, La Jolla, California 92093–0225, has been issued a permit to harass several species of marine mammals and sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

SUPPLEMENTARY INFORMATION: On May 17, 1995, notice was published in the **Federal Register** (60 FR 26406) that the above-named applicant had submitted a request for a scientific research permit to harass several species of marine mammals and sea turtles over a 2-year period, during sound transmission studies in the waters offshore central California. The requested permit has been issued, under the authority of the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq*.), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 *et seq*.), the regulations governing endangered species permits (50 CFR Parts 217–227), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq*.), and the fur seal regulations at 50 CFR part 215.

Issuance of this Permit as required by the ESA of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: July 17, 1995.

Gary M. Barone,

Acting Chief, Permits and Documentation Division, Office of Protected Resources,National Marine Fisheries Service.

[FR Doc. 95–18016 Filed 7–20–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

July 14, 1995.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 21, 1995

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

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

A notice published in the **Federal Register** on May 23, 1995 (60 FR 27276) announces that if no solution is agreed upon in consultations between the Governments of the United States and the Philippines on Category 670–L the Committee for the Implementation of Textile Agreements may establish a limit at a level of not less than 7,718,533 kilograms for the twelve-month period beginning on April 24, 1995 and extending through April 23, 1996.

Inasmuch as no agreement was reached during the consultation period on a mutually satisfactory solution, the United States Government has decided to control imports in Category 670–L for the period beginning on April 24, 1995 and extending through April 23, 1996 at a level of 7,718,533 kilograms.

This action is taken in accordance with the Uruguay Round Agreement on Textiles and Clothing and the Uruguay Round Agreements Act.

The United States remains committed to finding a solution concerning Category 670–L. Should such a solution be reached in consultations with the Government of the Philippines, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 14, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing; and in accordance with the provisions of Executive Order 11651 of March 30, 1972, as amended, you are directed to prohibit, effective on July 21, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 670–L [1], produced or manufactured in the Philippines and exported during the period beginning on April 24, 1995 and extending through April 23, 1996, in excess of 7,718,533 kilograms [2].

Textile products in Category 670–L which have been exported to the United States prior to April 24, 1995 shall not be subject to this directive.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–17958 Filed 7–20–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATES: August 21, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 9, 1994 and May 26, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 F.R. 46620 and 60 F.R. 27968) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, military resale commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity, military resale commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodity, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity, military resale commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodity, military resale commodities and services are hereby added to the Procurement List:

Commodity

Tape, Electronic Data Processing
7045–01–370–9678

[1] Category 670–L: Only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030, 4202.92.9025.

[2] The limit has not been adjusted to account for any imports exported after April 23, 1995.

Military Resale Commodities

Pad, Scouring
M.R. 547
M.R. 560
Christmas Textile Ensemble
M.R. 976

Services

Administrative Services, Naval Air Station, Cecil Field, Florida
Janitorial/Custodial, Hastings Keith Federal Building, 53 North 6th Street, New Bedford, Massachusetts
Remanufacturing HP4 Laser Toner Cartridges, Malmstrom Air Force Base, Montana

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–18017 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List brass label holders to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATES: August 21, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 3, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 F.R. 11958) of proposed addition to the Procurement List.

Comments were received from the current contractor for the label holder. The contractor claimed that it had been producing the holder for the Government for a number of years and loss of these sales would have a considerable impact on the company. The contractor also noted that it had used worked with disabilities in the past to package the holders. The contractor questioned whether people with severe disabilities could safely and efficiently manufacture the holders, or whether manufacturing operations would be subcontracted to a competitor of the contractor.

Projections of Government needs for the holder have declined substantially since the contractor last supplied it to the Government. Accordingly, the contractor's sales figures have been adjusted to account for the newer projections. The resulting level of impact is well below the level which the Committee considers severe adverse impact, even when the contractor's longtime dependence on sales of the holder to the Government is taken into account.

The contractor is not now using people with disabilities to package the holder. Committee inquiries revealed that the contractor had not used the disability organization it named for some years. Consequently, the Committee does not believe any people with disabilities will be displaced by the addition of the holder to the Procurement List.

The nonprofit agency which will produce the holder will not be subcontracting the stamping, which as the contractor noted is largely an automated process. The nonprofit agency has experience in using people with severe disabilities to perform the types of metal stamping functions required to produce the holder. These functions involve the use of high-speed, automated equipment. The nonprofit agency's successful production of several other items that require the use of such equipment demonstrates that people with severe disabilities are capable of operating it safely and efficiently.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Holder, Label, Brass
9905–02–000–8089
9905–02–000–8008
9905–02–000–8698

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–18018 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 21, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will result in authorizing small entities to furnish the commodity and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Seat, Vehicular
2540–00–591–1108
NPA: Tuscola County Community Mental Health Services, Caro, Michigan

Service

Janitorial/Custodial, Department of the Treasury, Birmingham Regional Financial Center, Birmingham, Alabama.
NPA: Alabama Goodwill Industries, Birmingham, Alabama

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–18019 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities, a military resale commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 21, 1995

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities, military resale commodity and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities, military resale commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Cleaning and Degreasing Compounds
6850–01–383–3038
6850–01–383–3042
6850–01–383–3045
6850–01–383–3046
6850–01–383–3047
6850–01–383–3052
6850–01–383–3053
6850–01–383–3054
6850–01–383–3056
6850–01–383–3058
6850–01–383–3059
6850–01–383–3060
NPA: Lighthouse for the Blind, St. Louis, Missouri
The Lighthouse of Houston, Houston, Texas

Mop, Sponge
7920–00–728–1167
NPA: Industries of the Blind, Inc., Greensboro, North Carolina

Military Resale Commodity

Refill, Lint Roller
M.R. 864
NPA: The Lighthouse, Inc., Long Island City, New York

Services

Administrative Services
Department of Veterans Affairs Medical Center
Mountain Home, Tennessee
NPA: Dawn of Hope Development Center, Inc.
Johnson City, Tennessee

Food Service Attendant
Department of Veterans Affairs Medical Center
Mountain Home, Tennessee
NPA: Dawn of Hope Development Center, Inc.
Johnson City, Tennessee

Janitorial/Custodial
U.S. Coast Guard Aviation Training Center
Mobile, Alabama
NPA: GWI Services, Inc.
Mobile, Alabama

Janitorial/Custodial
Department of the Air Force
440th Airlift Wing
300 East College Avenue
Milwaukee, Wisconsin
NPA: Goodwill Industries of Southeastern Wisconsin, Inc
Milwaukee, Wisconsin

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–18020 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Excess and Surplus Federal Property as Facilities To Assist the Homeless at Carswell Air Force Base (AFB)

This notice identifies unutilized, underutilized, excess, and surplus Federal property at Carswell AFB for possible use to assist the homeless.

For further information contact Derrick Curtis, Carswell Redevelopment Authority, 250 Pumphrey, Fort Worth, TX, 76114, telephone (817) 377–8061.

In accordance with Public Law 103–421, the Carswell Redevelopment

Authority shall consult with representatives of the homeless in the communities in the vicinity of Carswell AFB, and undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless. The Carswell Redevelopment Authority will specify the deadlines for submitting notices of interest from state and local government agencies and representatives of the homeless in the vicinity of the closing base in accordance with the Base Closure Community Redevelopment and the Homeless Assistance Act of 1994, Public Law 103–421. At the end of the homeless screening period the Carswell Redevelopment Authority will have up to nine (9) months to prepare a plan which incorporates homeless interests. The Carswell Redevelopment Authority will enter into binding agreements with homeless providers during this period. There will also be a public comment period before the Carswell Redevelopment Authority submits its plan to Housing and Urban Development (HUD).

At the end of the nine (9) month planning period and the public comment period, the Carswell Redevelopment Authority will submit its plan to HUD for review and approval. HUD will evaluate the plan according to specified criteria, and will then make its decision on the plan within sixty (60) days of its submittal.

If the plan is approved, HUD will so notify the Department of the Air Force who will then immediately dispose of property either directly to homeless providers or to the Carswell Redevelopment Authority for conveyance to such providers. If the plan is rejected by HUD, there is an amendment process. If the plan is still deficient after the amendment process, HUD will take the place of the Carswell Redevelopment Authority for the purposes of making decisions on property to support homeless needs.

Excess and Surplus Federal Properties

8 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210108
Status: McKinney Act
Base closure Number of Units: 8
Comment: 1,203 sq. ft. 1-story wood frame residence.

41 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210109
Status: McKinney Act
Base closure Number of Units: 41
Comment: 1,204 sq. ft., 1-story wood frame residence.

44 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210110
Status: McKinney Act
Base closure Number of Units: 44
Comment: 1,209 sq. ft. 1-story wood frame residence.

12 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210111
Status: McKinney Act
Base closure Number of Units: 12
Comment: 1,348 sq. ft., 1-story wood frame residence.

40 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210112
Status: McKinney Act
Base closure Number of Units: 40
Comment: 1,387 sq. ft. 1-story wood frame residence.

39 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210113
Status: McKinney Act
Base closure Number of Units: 39
Comment: 1,397 sq. ft., 1-story wood frame residence.

18 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210114
Status: McKinney Act
Base closure Number of Units: 18
Comment: 1,489 sq. ft. 1-story wood frame residence.

25 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210115
Status: McKinney Act
Base closure Number of Units: 25
Comment: 1,493 sq. ft., 1-story wood frame residence.

18 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210116
Status: McKinney Act
Base closure Number of Units: 18
Comment: 1,581 sq. ft. 1-story wood frame residence.

7 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210117
Status: McKinney Act
Base closure Number of Units: 7
Comment: 1,625 sq. ft., 1-story wood frame residence.

Child Care Facility
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210125
Status: McKinney Act
Base closure Number of Units: 1
Comment: Concrete block & brick structure 1–2 story.

9 Recreation Facilities
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210126
Status: McKinney Act
Base closure Number of Units: 9
Comment: Concrete block, brick or wood structures, Incs. golf course clubhouse, 5 maintenance bldgs and 3 stables.

11 Hazard. Stor./Igloo Bldgs
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number: 199210137
Status: McKinney Act
Base closure Number of Units: 11
Comment: 11 concrete storage igloos.

6 Small Arms Weapon Stor. Bldgs
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 6
Comment: Metal and concrete block weapon storage facilities.

2 Administrative Weapons Stor. Bldgs
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 2
Comment: Metal and concrete block administrative weapon storage bldgs.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,457 sq. ft. 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127

Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,487 sq. ft., 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,433 sq. ft. 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,263 sq. ft., 1-story wood frame residence.

9 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 9
Comment: 1,622 sq. ft. 1-story wood frame residence.

8 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 8
Comment: 1,434 sq. ft., 1-story wood frame residence.

13 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 13
Comment: 1,668 sq. ft. 1-story wood frame residence.

4 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 4
Comment: 1,612 sq. ft., 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,717 sq. ft. 1-story wood frame residence.

3 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 3
Comment: 1,636 sq. ft., 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,407 sq. ft. 1-story wood frame residence.

12 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 12
Comment: 1,870 sq. ft. 1-story wood frame residence.

24 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 24
Comment: 2,099 sq. ft., 1-story wood frame residence.

27 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 27
Comment: 2,148 sq. ft. 1-story wood frame residence.

32 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 32
Comment: 1,624 sq. ft., 1-story wood frame residence.

6 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 6
Comment: 1,684 sq. ft. 1-story wood frame residence.

7 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 7
Comment: 1,640 sq. ft., 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 2,138 sq. ft. 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,316 sq. ft. 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,376 sq. ft., 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,353 sq. ft. 1-story wood frame residence.

2 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 2
Comment: 1,309 sq. ft., 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,369 sq. ft. 1-story wood frame residence.

2 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act

Base closure Number of Units: 2
Comment: 1,601 sq. ft., 1-story wood frame residence.

2 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 2
Comment: 1,562 sq. ft. 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,573 sq. ft., 1-story wood frame residence.

2 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 2
Comment: 1,548 sq. ft. 1-story wood frame residence.

2 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 2
Comment: 1,613 sq. ft., 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,629 sq. ft. 1-story wood frame residence.

2 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 2
Comment: 1,350 sq. ft., 1-story wood frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 2,331 sq. ft. 1-story wood and stone frame residence with garage.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 3,451 sq. ft., 1-story wood frame residence with garage.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,868 sq. ft. 1-story wood frame residence with garage and guest quarters.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,970 sq. ft., 1-story wood frame residence with garage.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,807 sq. ft. 1-story wood and stone frame residence.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 2,583 sq. ft., 1-story wood and stone frame residence with garage.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 3,273 sq. ft. 2-story wood and stone frame residence with garage.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 4,877 sq. ft., 2-story wood and stone frame residence with garage. This facility is listed on the National Register of Historic Places.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 1,716 sq. ft. 1-story wood frame residence with garage.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 4,275 sq. ft., 2-story wood and brick frame residence with garage.

1 Military Family Housing
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 1
Comment: 4,718 sq. ft., 2-story wood frame residence with garage.

2 Dog Kennel Facilities
Carswell Air Force Base
Fort Worth Co: Tarrant TX 76127
Landholding Agency: Air Force-BC
Property Number:
Status: McKinney Act
Base closure Number of Units: 2
Comment: 16 dog cages and 1 wood frame facility

3 Recreation Areas
Carswell Air Force Base
Fort Worth Co: Tarrant Tx 76127
Landholding Agency: Air Force-BC
Property Number 199210127
Status: Pryor Admendment
Base closure Number of Units: 3
Comment: Three parcels including 170 acre golf course, 22 acre family camp, and 25 acre grazing land.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–17928 Filed 7–20–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Notice of Floodplain and Wetlands Involvement for the Albeni Falls Wildlife Management Plan

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: BPA proposes to fund the development and implementation of the Albeni Falls Wildlife Management Plan

in a cooperative effort with the Idaho Department of Fish and Game, the U.S.D.A. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Forest Service, the Upper Columbia United Tribes, the Kalispel Tribe, the Coeur d'Alene Tribe, and the Albeni Falls Interagency Work Group. The proposed action would allow the sponsors to secure long-term agreements with public and private landowners to protect and enhance a variety of wetland and riparian habitats in the Lake Pend Oreille vicinity of Bonner and Kootenai Counties, Idaho (T59N, T52S, R6W and R3E).

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

The assessment will be included in the environmental assessment (EA) being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the EA.

DATES: Comments are due to the address below no later than August 21, 1995.

FOR FURTHER INFORMATION, CONTACT: Robert Beraud, ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, phone number 503–230–3599, fax number 503–230–5699, or Robert Shank, ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5115.

SUPPLEMENTARY INFORMATION: BPA proposes to fund activities that would enable the sponsors to replace 28,587 habitat units lost as a result of the construction and operation of Albeni Falls Dam, and to conduct long-term wildlife management activities within the boundaries of the Albeni Falls Wildlife Study Area of approximately 232,848 hectares (575,360 acres).

Maps and further information are available from BPA at the address above.

John M. Taves,

NEPA Compliance Officer, Office of Environment/Fish and Wildlife.

[FR Doc. 95–18038 Filed 7–20–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 95–44–NG]

Consumers Power Company; Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Consumers Power Company (CPCo) authorization to import from Norcen Energy Resources Limited and North Canadian Oils up to 28,000 Mcf per day of Canadian natural gas through May 31, 1997.

CPCo's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–18034 Filed 7–20–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–49–NG]

Cascade Natural Gas Corporation; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Cascade Natural Gas Corporation blanket authorization to import up to 56 Bcf of natural gas from Canada over a period of two years beginning on the date of first delivery after June 30, 1995. This order is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on June 30, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–18035 Filed 7–20–95; 8:45 am]

BILLING CODE 6450–01–P

[FE DOCKET NO. 95–52–NG]

Sacramento Municipal Utility District; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Sacramento Municipal Utility District (SMUD) blanket authorization to import up to 25 Bcf of natural gas from Canada. This authorization to import natural gas is for a period of two years beginning on the date of the initial delivery. The gas would be used as fuel for electric generation at cogeneration facilities owned by SMUD which are either existing or under construction.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on July 10, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–18036 Filed 7–20–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP95–607–000]

Northwest Pipeline Corporation; Request Under Blanket Authorization

July 17, 1995.

Take notice that on July 10, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–607–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate the new Western Market Center tap under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to construct, own and operate new tap facilities connecting its mainline transmission system with the Western Market Center Hub at Muddy Creek (Hub), in Lincoln

County, Wyoming. Northwest states that the proposed tap facilities will be located at approximately milepost 437.5 on Northwest's existing 22-inch Ignacio to Sumas mainline in Section 25, Township 20 North, Range 115 West. Northwest further states that the proposed facilities, consisting of a 10-inch tap, valves, appurtenances and approximately 100 feet of 10-inch piping, will have the capacity to deliver to or receive up to approximately 100,000 Dth per day (at 700 psig) to or from the Hub to be owned and operated by Overland Trail Transmission Company LP (Overland), an intrastate pipeline. Northwest states that it will provide transportation service to and from the Hub pursuant to authorized Rate Schedule TF–1 and TI–1 transportation agreements with various shippers.

Northwest explains that the proposed tap facilities will be used by Northwest to deliver to and receive natural gas from a new bi-directional meter station to be owned and operated by Overland as part of the Hub, under duly authorized transportation agreements with various shippers on Northwest's system. It is stated that Northwest and Overland have entered into a Facilities Agreement dated May 15, 1995, which provides for Northwest to construct, own and operate the proposed tap facilities. Northwest further explains that the Hub will provide a variety of natural gas market hub services to shippers utilizing the Hub via interconnections with various pipelines. Northwest advises that Overland's plans for the Hub include interconnections with Colorado Interstate Gas Company, Kern River Gas Transmission Company and Questar Pipeline Company, in addition to Northwest.

Northwest states that Overland will reimburse Northwest for the construction cost of the proposed tap facilities, estimated to be $157,300.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17950 Filed 7–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–610–000]

Texas-Ohio Pipeline, Inc.; Application

July 17, 1995.

Take notice that on July 11, 1995, Texas-Ohio Pipeline, Inc. (Texas-Ohio), 800 Gessner, Suite 900, Houston, Texas 77024, filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale to Compressor Systems, Inc. (CSI) a portion of Texas-Ohio's compression facilities located in Garrard County, Kentucky, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas-Ohio states that in an effort to improve its operational efficiency and economic condition, the abandonment proposed herein will enable Texas-Ohio to streamline its operations, to reduce its existing transportation rates and continue to assure shippers service that will be more efficient as well as competitive.

Specifically, Texas-Ohio proposes to abandon only a portion of its compression facilities consisting of a single Caterpillar engine with an Ariel JGK/4 compressor with frame and Airtech cooler and transfer those facilities back to CSI.

Texas-Ohio states that it was constructed to operate as a winter peaking service which allowed gas flow around historical bottlenecks created in Tennessee Gas Pipeline Company's (Tennessee) and Texas Eastern Transmission Corporation's (TETCO) supply area. Texas-Ohio states that its facilities consist of approximately 600 feet of 10-inch pipeline and two gas compression units each with approximately 980 horsepower. With the advent of Order No. 636 and the restructuring of the interstate pipeline industry, Texas-Ohio states that its pipeline operations have significantly changed. It is stated that unbundling of pipeline services and rate structure changes on the interstate pipelines have changed the economics and the flow of natural gas on both the interconnecting pipelines of Texas-Ohio's system to a point where historical bottlenecks occur less often, requiring substantially less peaking service.

It is stated that Texas-Ohio's facilities have been available for peaking service during the past two winter seasons. However, Texas-Ohio contends that, since the inception of Order No. 636, the amount of gas throughput has only required the use of a single compression unit, versus the two currently in place. Texas-Ohio states that upon Commission approval, the abandonment would allow Texas-Ohio to physically remove a single compression unit which would transfer back to CSI, leaving the second or like unit in place at the Texas-Ohio facilities assuring service, should it be requested. Although both units are identical and the removal of one unit versus the other will not make a difference, the unit selected for removal is the first unit located on the suction side or closest to the Tennessee interconnection. Further, it is stated that since the approval of the blanket transportation certificate by the Commission and the completion of the required open-season, no requests for firm (FTS) capacity have been received, requiring no allocation of system capacity.

Texas-Ohio states that the authorization of the abandonment will serve the public interest by reducing cost of service, including operating expenditures for labor and equipment maintenance, thereby reducing Texas-Ohio's current transportation rates.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 7, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment

are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas-Ohio to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17951 Filed 7–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2643–001 Oregon]

PacifiCorp Electric Operations; Availability of Environmental Assessment

July 17, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a subsequent license for the existing Bend Hydroelectric Project, located on the Deschutes River, in Deschutes County, Oregon, in the City of Bend, and has prepared a final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental effects of the project and concludes that either issuance of a new license for the proposed project, with staff preferred measures, or retiring the project with staff preferred measures, would not be a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17946 Filed 7–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11438–001 Pennsylvania]

Dashields Hydro Associates; Surrender of Preliminary Permit

July 17, 1995.

Take notice that the Dashields Hydro Associates, permittee for the Dashields Hydro Project No. 11438, located on the Ohio River, Allegheny County, Pennsylvania, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 12, 1994, and would have expired on December 30, 1996. The permittee states that the project would be economically infeasible.

The permittee filed the request on July 5, 1995, and the preliminary permit for Project No. 11438 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17947 Filed 7–20–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11436–001 West Virginia]

Opekiska Hydro Associates; Surrender of Preliminary Permit

July 17, 1995.

Take notice that the Opekiska Hydro Associates, permittee for the Opekiska Project No. 11436, located on the Monongahela River in Marion Ccounty, West Virginia, has requested that its preliminary permit be terminated. The preliminary permit was issued on March 16, 1994, and would have expired on February 28, 1997. The permittee states that the project would be economically infeasible.

The permittee filed the request on July 11, 1995, and the preliminary permit for Project No. 11436 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 95–17948 Filed 7–20–95; 8:45 am]

BILLING CODE 6717–01–M

Notice of Cases Filed With the Office of Hearing and Appeals; Week of June 12 Through June 16, 1995

During the Week of June 12 through June 16, 1995, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 17, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 12 through June 16, 1995]

Date	Name and location of applicant	Case No.	Type of submission
June 12, 1995 ...	Richard W. Miller, Kansas City, Missouri.	VFA–0049	Appeal of an information request denial. If granted: The May 5, 1995 Freedom of Information Request Denial issued by the Strategic Petroleum Reserve Project Management Office would be rescinded, and Richard W. Miller would receive access to memoranda, government cost estimates, price negotiation memoranda, job diaries and drafts of specifications regarding contract number DEAC96–92 PO16055 between the DOE and the Foley Company.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 12 through June 16, 1995]

Date	Name and location of applicant	Case No.	Type of submission
June 15, 1995 ...	John Morrell & Co., Sioux Falls, South Dakota.	RR272–203	Request for modification/rescission in the crude oil refund proceeding. If granted: The March 22, 1995 Dismissal, Case No. RF272–96573, issued to John Morrell & Co. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
Do	Murray, Jacobs and Abel, Alexandria, Virginia.	VFA–0050	Appeal of an information request denial. If granted: The May 18, 1995 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and Murray, Jacobs and Abel would receive access to information relating to an investigation of Technology and Management Services, Inc.
Do	Pittsburgh Naval Reactors Office, West Mifflin, Pennsylvania.	VSO–0041	Request for hearing under 10 C.F.R. Part 710. If granted: An individual whose security clearance was suspended by the Pittsburgh Naval Reactors Office would receive a hearing under 10 C.F.R. Part 710.
June 16, 1995 ...	Esther Samra, Tarrytown, New York.	VFA–0051	Appeal of an information request denial. If granted: The May 2, 1995 Freedom of Information Request Denial issued by DOE Albuquerque Operations Office would be rescinded, and Esther Samra would receive access to a copy of a photograph of the Fat Man atomic bomb, negative number 2408.

REFUND APPLICATIONS RECEIVED

[Week of June 12 through June 16, 1995]

Date received	Name of refund proceeding/name of refund application	Case No.
6/12/95 thru 6/16/95	Citronelle Refund Applications	RF345–44 thru RF345–49.
6/12/95 thru 6/16/95	Supplemental Crude Refunds	RK272–319 thru RK272–359.
6/12/95 thru 6/16/95	Crude Oil Refund Applications	RG272–331 thru RG272–342.

[FR Doc. 95–18039 Filed 7–20–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Cases Filed With the Office of Hearing and Appeals; Week of June 19 Through June 23, 1995

During the Week of June 19 through June 23, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 17, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 19 through June 23, 1995]

Date	Name and location of applicant	Case No.	Type of submission
6/19/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0042	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual whose security clearance was suspended by the Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
Do	Stofa's Texaco, Poughkeepsie, New York	RR321–185 ...	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The March 3, 1995 Dismissal, Case No. RF321–7238, issued to Stofa's Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund proceeding.
6/20/95	Blumberg, Seng, Ikeda & Albers, Fresno, California.	VFA–0052	Appeal of an Information Request Denial. If granted: The May 17, 1995 Freedom of Information Request Denial issued by the DOE Office of Inspector General would be rescinded, and Blumberg, Seng, Ikeda & Albers would receive access to the identities of those individuals whose names were withheld pursuant to Exemptions 6 and 7(c).

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 19 through June 23, 1995]

Date	Name and location of applicant	Case No.	Type of submission
6/21/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSA–0019	Request for Review of Opinion under 10 C.F.R. Part 710. If granted: The May 25, 1995 Opinion of the Office of Hearings and Appeals, Case No., VSO–0019, would be reviewed at the request of an individual employed at Albuquerque Operations Office.
Do	Munir A. Malik, Hartford, Connecticut	VFA–0053	Appeal of an Information Request Denial. If granted: Munir A. Malik would receive a response to his June 1 & 2, 1995 Freedom of Information Requests from the Albuquerque and Oakland operations offices, and also would receive a listing of current FOI requests pending before those offices.
6/22/95	Rocky Flats Field Office, Golden, Colorado	VSO–0043	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual whose security clearance was suspended by the Rocky Flats Field Office would receive a hearing under 10 C.F.R. Part 710.

REFUND APPLICATIONS RECEIVED

[June 19 through June 23, 1995]

Date received	Name of refund proceeding/name of refund application	Case No.
6/19/95 Thru 6/23/95	Crude Oil Refund Applications	RG272–343 thru RG272–361
6/19/95 Thru 6/23/95	Supplemental Crude Refunds	RK272–360 thru RK272–423

[FR Doc. 95–18040 Filed 7–20–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5261–4]

Notice of Transfer and Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation, and Liability Act to EPA Contractors and Subcontractors

AGENCY: U. S. Environmental Protection Agency (EPA).

ACTION: Notice for comment.

SUMMARY: EPA Region II hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) and intends to authorize access to Confidential Business Information (CBI) which has been submitted to Region II, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), to the following contractors and subcontractors: CACI, Acumenics Research and Technology, Inc., and Aspen Systems Corporation.

FOR FURTHER INFORMATION CONTACT: Janice Dudek, U.S. Environmental Protection Agency, Office of Regional Counsel, 17th Floor, 290 Broadway, New York, NY 10007–1866, (212) 637–3109.

SUPPLEMENTARY INFORMATION:

Notice of Required Determinations, Contract Provisions, and Opportunity to Comment

CERCLA, commonly known as ''Superfund,'' requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery and litigation support.

EPA Region II has determined that disclosure of CBI to its contractors and subcontractors is necessary in order that they may carry out the work requested under those contracts or subcontracts with EPA, including: Compilation, organization and tracking of litigation support documents and information; (2) review and analysis of documents and information; and (3) provision of computerized database systems and customized reports. Documents include, but are not limited to, responses to CERCLA Section 104(e) information requests, contractor invoices, and progress reports. In performing these tasks, employees of the contractors and subcontractors listed below will be required to sign a written agreement that they: (1) Will use the information only for the purpose of carrying out the work required by the contract; (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office; and (3) shall return to EPA all copies of the information and any abstracts or extracts therefrom: (a) upon completion of the contracts; (b) upon request of EPA; or (c) whenever the information is no longer required by the contractor or subcontractor for performance of work requested under those contracts. These nondisclosure statements shall be maintained on file with the EPA Region II Project Contact for CACI, Acumenics Research and Technology, Inc., and Aspen Systems Corporation. CACI, Acumenics, and Aspen Systems employees will be provided technical direction from their respective EPA contract management staff.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii) and 40 CFR 2.310(h). Comments should be sent to Janice Dudek, U.S. Environmental Protection Agency, Office of Regional Counsel, 17th floor, 290 Broadway, New York, NY 10007–1866.

Contractor/subcontractor	Contract No.
CACI	3C–G–ENR–0051
Acumenics research and technology, Inc.	3C–G–ENR–0052
Aspen Systems Corporation	3C–G–ENR–0053

Dated: July 13, 1995.

Walter E. Mugdan,

Acting Regional Counsel.

[FR Doc. 95–17881 Filed 7–20–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4725–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed July 10, 1995 through July 14, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950302, DRAFT EIS, AFS, UT, WY, Wasatch-Cache National Forest, Rangeland Health Forest Management Plan, Implementation, Cache, Box Elders, Davis, Duchesne, Morgan, Rich, Salt Lake, Tooele, Summit, Wasatch and Weber Counties, UT and Uinta County, WY, Due: September 5, 1995, Contact: Tom Scott (801) 524–5188.

EIS No. 950303, FINAL EIS, NPS, CA, Joshua Tree National Monument General Management Plan and Development Concept Plan, Implementation, Riverside and San Bernardino Counties, CA, Due: August 21, 1995, Contact: Alan Schmierer (415) 744–3971.

EIS No. 950304, DRAFT SUPPLEMENT, FHW, CT, US 6 Freeway Transportation Corridor Improvements, Additional Alternatives for Improvements between I–384 and the US 6 Freeway in Columbia, Bolton, Coventry, Andover and Columbia, CT, Due: September 22, 1995, Contact: Dwight A. Home (203) 659–6703.

EIS No. 950305, FINAL EIS, NPS, WA, Lake Chelan National Recreation Area General Management Plan, Implementation, Chelan County, WA, Due: August 21, 1995, Contact: William Paleck (360) 856–5700.

EIS No. 950306, DRAFT EIS, SFW, NV, Lahontan Valley Wetlands Water Rights Acquisition Program, Implementation, Churchill County, NV, Due: September 20, 1995, Contact: Ronald M. Anglin (702) 432–5128.

EIS No. 950307, FINAL EIS, AFS, CO, Illinois Creek Timber Sale, Timber Harvesting, Implementation, Amended Land and Resource Management Plan, Grand Mesa, Uncompahgre and Gunnison National Forests, Taylor River/Cebolla Ranger District, Gunnison County, CO, Due: August 21, 1995, Contact: James Dawson (970) 641–0471.

EIS No. 950308, DRAFT EIS, AFS, ID, Lower South Fork Salmon River Post-Fire Project, Fire-Killed and Imminently Dead Timber Harvesting, Implementation and COE Section 404 Permit Issuance, Payette National Forest, McCall Ranger District, Idaho and Valley Counties, ID, Due: September 5, 1995, Contact: Dan Anderson (208) 634–0400.

EIS No. 950309, FINAL EIS, GSA, NY, U.S. Plaza at Rainbow Bridge Renovation Project, Leasing of Space for Use by the U. S. Immigration and Naturalization Service and the U. S. Customs Service, Niagara County, NY, Due: August 21, 1995, Contact: Peter A. Sneed (212) 264–3581.

EIS No. 950310, LEGISLATIVE FINAL EIS, AFS, OR, Wallowa River National Wild and Scenic River Study from the Confluence of the Minam and Wallowa Rivers to the Confluence of the Wallowa River and the Wild and Scenic Grande Ronde River for Designation or Nondesignation into the National Wild and Scenic Rivers System, Union and Wallowa Counties, OR, Due: August 21, 1995, Contact: Steve Davis (503) 523–6391.

EIS No. 950311, LEGISLATIVE FINAL EIS, NPS, OR, ADOPTION—Wallowa River Wild and Scenic River Study from the Confluence of the Minam and Wallowa Rivers to the Confluence of the Wallowa River and the Wild and Scenic Grande Ronde River for Designation or Nondesignation into the National Wild and Scenic River System, Union and Wallowa Counties, OR, Due: August 21, 1995, Contact: Dan Haas (206) 220–4120. The US Department of the Interior's, National Park Service (NPS) has adopted the US Department of Agriculture's, Forest Service FEIS #950310, filed with the Environmental Protection Agency on 7–13–95. NPS is a cooperating agency on this project. Recirculation of the document is not necessary under Section 1506.3(c) of the Council on Environmental Quality Regulations.

EIS No. 950312, FINAL EIS, UMC, CA, San Onofre Area Sewage Effluent Compliance Project, Cease and Desist Order, Camp Pendleton Marine Corps Base, San Diego County, CA, Due: August 21, 1995, Contact: Luple Armas (619) 725–3004.

EIS No. 950313, DRAFT EIS, FRC, WA, Rocky Reach Hydroelectric Project (FERC No. 2145) Operating License Amendment Issuance to Increase Lake Entiat Reservoir, Chelan and Douglas Counties, WA, Due: September 5, 1995, Contact: James Hastreiter (503) 326–5846.

EIS No. 950314, FINAL EIS, DOE, Energy Planning and Management Program to Service (15) States from Minnesota in the Northeast to California in the Southwest, Power Marketing Initiative, Implementation, Due: August 21, 1995, Contact: Robert Fullerton (303) 275–1610.

EIS No. 950315, DRAFT EIS, EPA, NJ, Hackensack Meadows District (HMD) Special Area Management Plan (SAMP), Development and Implementation, COE Section 10 and 404 Permit Issuance, NJ, Due: September 18, 1995, Contact: Robert W. Hargrove (212) 637–3495.

EIS No. 950316, FINAL EIS, NPS, AZ, Grand Canyon National Park General Management Plan, Implementation, Coconino and Mohave Counties, AZ, Due: August 21, 1995, Contact: Larry L. Norris (303) 969–2267.

EIS No. 950317, FINAL EIS, NAS, Cassini Spacecraft Exploration Mission to Explore the Planet Saturn, Implementation, Due: August 21, 1995, Contact: Peter B. Ulrich (202) 358–0290.

EIS No. 950318, DRAFT EIS, USN, PR, VA, Relocatable Over The Horizon Radar (ROTHR) System Construction and Operation, Commonwealth of Puerto Rico and Chesapeake, VA, Due: September 5, 1995, Contact: Linda Blount (804) 322–4892.

EIS No. 950319, DRAFT EIS, USN, IL, Glenview Naval Air Station Disposal and Reuse, Implementation, COE Section 404 Permit and EPA Permits Issuance, Cook County, IL, Due: September 5, 1995, Contact: Thomas Burst (803) 743–0590.

Dated: July 18, 1995.

William D. Dickerson,

Deputy Director, NEPA Division, Office of Federal Activities.

[FR Doc. 95–18048 Filed 7–20–95; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320.9

July 17, 1995.

The Federal Communications Commission is reviewing the following information collection requirement for possible 3-year extension under delegated authority 5 CFR 1320.9, authority delegated to the Commission

by the Office of Management and Budget (OMB) on October 6, 1994. This collection was previously approved by OMB and is unchanged. Public comments are invited on this collection for a period ending [thirty days from the date of publication in the Federal Register.] Persons wishing to comment on this information collections should contact Dorothy Conway, Federal Communications Commission, 1919 M Street NW., Room 242–B, Washington, DC 20554. You may also send comments via Internet to DConway@fcc.gov. Upon approval FCC will forward supporting material and copies of these collections to OMB.

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information contact Dorothy Conway, Federal Communications Commission, (202) 418–0217.

OMB Number: 3060–0475.

Title: Section 90.713 Entry Criteria.

Action: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Federal Government; State, Local or Tribal Government.

Frequency of Response: On occasion.

Estimated Annual Burden: 34 responses; 25.5 hours burden per response; 867 hours total annual burden.

Needs and Uses: This information is required to determine eligibility of non-commercial applicants. This information is essential to ensure that the non-commercial channels are used as envisioned for internal communications.

OMB Number: 3060–0518.

Title: Section 90.631 Trunked system loading, construction and authorization requirements.

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 45 responses; 1.5 hours burden per response; 68 hours total annual burden.

Needs and Uses: Section 90.631 requires licensees of nationwide systems in the 900 MHz band to file a system progress report to demonstrate that they have met the construction benchmarks specified in 47 C.F.R Section 90.631. Licensing Division personnel will use the data to determine whether nationwide licensees have fulfilled the mandatory construction requirements in order to determine whether or not the licensee will maintain the rights to the licensed spectrum.

OMB Number: 3060–0517.

Title: Section 90.607 Supplemental information to be furnished by applicants for facilities under this subpart.

Action: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 144 responses; 2.5 hours burden per response; 360 hours total annual burden.

Needs and Uses: Section 90.607 requires applicants for new nationwide systems in the 900 MHz band to furnish a functional system diagram illustrating the inter-relationship of all stations being applied for. Commission licensing personnel will use the data to determine eligibility of the applicant to hold a radio station authorization.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–18101 Filed 7–20–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background:

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments are welcome and should be submitted on or before August 21, 1995.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829); for the hearing impaired only, telecommunications device for the deaf (TTD) (202-452-3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Milo Sunderhauf—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Request for OMB approval to extend without revision, the following report:

1. Report title: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks

Agency form number: FFIEC 004

OMB Docket number: 7100-0034

Frequency: Annually (for the report), and on occasion (for recordkeeping and disclosure requirements)

Reporters: Executive officers and principal shareholders of member banks

Annual reporting hours: 6,255

Estimated average hours per response: 1.27 hours (weighted average of 1 hour of reporting burden, 2.35 hours of recordkeeping burden)

Number of respondents: 4,925 (3,940 executive officers and principal shareholders filing the report, 985 state member banks fulfilling the recordkeeping burden)

Small businesses are affected.

General description of report: This information collection is mandatory[12 U.S.C. 1972(2)(G); and 12 U.S.C. 375(a)(6) and (10), and 375(b)(10)] and is/is given confidential treatment [12 C.F.R. 215.22(d); and 5 U.S.C. 552(b)(4) and (6)].

SUMMARY: Executive officers and principal shareholders of member banks who are indebted to correspondent banks must file the FFIEC 004 report on such indebtedness to them or their related interests. State member banks are required to retain these reports and fulfill other recordkeeping requirements, such as furnishing annually a list of their correspondent banks to their executive officers and principal shareholders.

Board of Governors of the Federal Reserve System, July 17, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–17971 Filed 7–20–95; 8:45am]

Billing Code 6210–01–F

First Commerce Corporation, 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 August 14, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Commerce Corporation, New Orleans, Louisiana; to merge with Peoples Bancshares, Inc., Chalmette, Louisiana, and thereby indirectly acquire Peoples Bank and Trust Company of St. Bernard, Chalmette, Louisiana.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Montana Security, Inc., Havre, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank of Havre, Havre, Montana.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Doniphan Bancshares, Inc., Doniphan, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Doniphan, Doniphan, Nebraska.

Board of Governors of the Federal Reserve System, July 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17972 Filed 7–20–95; 8:45 am]

BILLING CODE 6210–01–F

Peoples Holding Company, 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 August 4, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Peoples Holding Company, Winder, Georgia; to engage *de novo* through its subsidiary, TPB Leasing, Winder, Georgia, in commercial lending activities pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y. This activity will be conducted throughout the State of Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Central Illinois Financial Co., Inc., Champaign, Illinois; to engage *de novo* through its subsidiary, BankIllinois Trust Co., Champaign, Illinois, in trust activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17973 Filed 7–20–95; 8:45 am]

BILLING CODE 6210–01–F

Fleet Financial Group, Inc.; Formation of, Acquisition by, and Merger of Bank Holding Companies; and Acquisition of Nonbanking Companies

The company listed in this notice has 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 acquire voting securities of a bank or bank holding company. The listed company has 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 companies engaged in nonbanking activities that are listed in § 225.25 of Regulation Y and that are not listed in Regulation Y but have previously been approved by Board Order as closely related to banking and permissible for bank holding companies, or to engage in such activities. These 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.

Unless otherwise noted, comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Fleet Financial Group, Inc., Providence, Rhode Island (Fleet); to acquire and merge with Shawmut

National Corporation, Hartford, Connecticut (Shawmut), and thereby acquire Shawmut Bank Connecticut, N.A., Hartford, Connecticut, and Shawmut Bank, N.A., Boston, Massachusetts; Shawmut New Hampshire Corporation (SNHC) and its subsidiary, Shawmut Bank NH, both of Manchester, New Hampshire; and Shawmut New York Corporation and its subsidiary, Shawmut Bank New York, N.A., both of Schenectady, New York. Fleet also has applied to merge SNHC with and into its subsidiary, Indian Head Banks, Inc., Nashua, New Hampshire.

In connection with this application, Fleet also has applied to acquire Shawmut Bank, FSB, Boca Raton, Florida, and thereby operate a savings association pursuant to 12 CFR 225.25(b)(9); Hartford National Corporation, Hartford, Connecticut, and its subsidiaries, Shawmut National Trust Company, Stuart, Florida, and Shawmut Trust Company, New York, New York, and thereby engage in operating trust companies pursuant to 12 CFR 225.25(b)(3); Shawmut Corporation, Boston, Massachusetts, and its subsidiary, Shawmut Investment Advisers, Inc., Hartford, Connecticut, and thereby engage in asset management and investment advisory services pursuant to 12 CFR 225.25(b)(4); and Business Benefits Administrators, Inc., Boston, Massachusetts (BBA), and its subsidiary, Interpay, Inc., Mansfield, Massachusetts (Interpay) (Shawmut is in the process of submitting a notification to the Board to acquire BBA and Interpay), and thereby engage in payroll processing services pursuant to 12 CFR 225.25(b)(7). Fleet also is seeking Board approval to increase its ownership interest in Infinet Payment Systems, Inc., Hackensack, New Jersey (''IPS''), a joint venture with other banking organizations, to 21.1 percent, and thereby engage in operating retail electronic funds transfer networks and engage in data processing and related activities pursuant to 12 CFR 225.25(b)(7) of the Board's Regulation Y and by Board Order.

Fleet has applied to exercise an option to acquire up to 19.9 percent of the voting shares of Shawmut. In connection with this application, Shawmut has applied to exercise an option to acquire up to 19.9 percent of the voting shares of Fleet.

Board of Governors of the Federal Reserve System, July 17, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–17974 Filed 7–20–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of August 1995:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: August 14–15, 1995, 8 a.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Parklawn Room, Rockville, Maryland 20852.

Open August 14, 8 a.m. to 8:15 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications proposing studies to describe and examine the effects of changes that are occurring in markets for health care services and proposing analyses of the role of market forces in changing the content and delivery of health care in America.

Agenda: The open session of the meeting on August 14, from 8 a.m. to 8:15 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Patricia Thompson, Ph.D., Agency for Health Care Policy and Research, suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1451.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 13, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–17925 Filed 7–20–95; 8:45 am]

BILLING CODE 4160–90–M

Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of August 1995:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: August 17, 1995, 8:30 a.m.

Place: DoubleTree Hotel, 1750 Rockville Pike, Montrose Rom, Rockville, Maryland 20852.

Open August 17, 8:30 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose This Panel is charged with conducting the initial review of grant applications on research related to care for persons with acquired immune deficiency syndrome (AIDS) and other related human immunodeficiency virus (HIV) diseases.

Agenda: The open session of the meeting on August 17, from 8:30 a.m. to 9 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–2462.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 13, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–17926 Filed 7–20–95; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

[CDC–545]

Announcement of Cooperative Agreement to the Association of State and Territorial Directors of Health Promotion and Public Health Education

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a sole source cooperative agreement with the Association of State and Territorial Directors of Health Promotion and Public Health Education (ASTDHPPHE) to build health promotion and public health education. Approximately $100,000 will be available in FY 1995 to support this project. This award will begin on or about September 30, 1995, and will be for a 12-month budget period within a project period of up to 5 years.

Continuation awards within the project period will be made if progress is satisfactory and funds are available.

The purpose of this cooperative agreement is to assist the ASTDHPPHE, a key partner to CDC, in determining and developing the training, research, and program implementation requirements to build health promotion and public health education capacity at the State and territorial level.

The CDC will provide consultation, assistance, and support in planning, conducting, and evaluating program activities; plan and conduct the Annual National Conference on Health Promotion and Health Education; collaborate with the ASTDHPPHE to improve effectiveness in Managed Care and Worksite Health Promotion; encourage and facilitate the participation of ASTDHPPHE members in on-site technical assistance visits; and provide continuing updates on scientific, operational, and funding developments in the areas of health education and health promotion.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Educational and Community-Based Programs. (For ordering a copy of ''Healthy People 2000,'' see the section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under section 317(k)(2), of the Public Health Service Act, 42 U.S.C. 247b(k)(2), as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicant

Assistance will be provided only to the ASTDHPPHE. No other applications are being solicited. The program announcement and application kit have been sent to ASTDHPPHE. Eligibility is limited to ASTDHPPHE since it is the only appropriate and qualified agency that can provide the services specified under this cooperative agreement. ASTDHPPHE is the only national nonprofit health education organization in which program directors and staff representing all States and territories are members. As such, it is uniquely capable, and organized specifically, to serve as a leader and a convener of activities relative to State health education programs. ASTDHPPHE has a unique relationship with the Association of State and Territorial Health Officials (ASTHO) and ASTHO affiliates. It is the only organization whose primary mission is to promote health education and health promotion as core disciplines of public health practice and to advocate for quality health education and health promotion programs and strategies to address the nation's leading health problems. ASTDHPPHE has served as a health education and health promotion policy development and capacity-building organization since 1946, and historically has strengthened public health education goals and objectives. The membership is uniquely diverse and its members, who provide major leadership to State and territorial categorical health areas, have strengthened health education and health promotion programs nationwide.

ASTDHPPHE also provides consultation and technical assistance to numerous agencies and has liaison relationships with many national organizations. In this way, the Association is deeply involved in health education and health promotion program development and evaluation efforts conducted nationally.

In collaboration with other national organizations, the Association accomplishes its mission by disseminating information on state-of-the-art health education and health promotion policies and strategies. The Association has the established relationships and expertise necessary to accomplish the requirements of this cooperative agreement. The unique information exchange among the ASTDHPPHE members and expert program knowledge provide it with special credibility with national, private, and voluntary agencies.

Executive Order 12372 Review

This program is not subject to Executive Order 12372 review.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirement.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Where To Obtain Additional Information

Additional information may be obtained from Gordon R. Clapp, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Rd., NE., Room 314, Atlanta, GA 30305, telephone (404) 842–6508.

A copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the Summary may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: July 17, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18025 Filed 7–20–95; 8:45 am]

BILLING CODE 4163–18–P

[CDC–567]

Cooperative Agreement with the World Health Organization (WHO)

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of funds for fiscal year (FY) 1995 for a cooperative agreement with the World Health Organization (WHO) for initiatives related to emerging infectious diseases. Approximately $100,000 is available in FY 1995 to fund this program. It is expected that the award will begin on or about September 1, 1995, for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000'', a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement focuses on the priority area of Immunization and Infectious Diseases. (For ordering a copy of ''Healthy People 2000'', see the section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under Sections 301 and 307 of the Public Health Service Act, 42 U.S.C. 241 and 242l, as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicant

Assistance will be provided only to WHO for this project. No other applications are solicited. The program announcement and application kit have been sent to WHO.

WHO is the only international/intergovernmental agency qualified to conduct the activities under this cooperative agreement because it has:

A. A unique position among the world's health agencies as the technical agency for health within the United Nations.

B. Access to all national health promotion and disease prevention programs and potential research sites through its six regional offices located in Washington, DC; Copenhagen, Denmark; Alexandria, Egypt; Brazzaville, Congo; Delhi, India; and Manila, Philippines.

C. In collaboration with other international organizations, WHO works to accomplish its mission by disseminating information related to infectious disease program needs and services, recommends and advocates improved policies and programs, and provides consultation and guidance at the international, national, and local level.

D. WHO offers special opportunities for furthering research programs through the use of unusual talent resources, populations, or environmental conditions in other countries that are not readily available in the United States or that provide augmentation of existing U.S. resources.

E. WHO is uniquely qualified to conduct activities that have specific relevance to the mission and objectives of CDC and the potential to advance knowledge that would benefit the United States.

Purpose

The purpose of this program is to assist WHO in implementing a coordinated plan to assist national governments and regional authorities to improve infectious disease surveillance, build public health infrastructure, promote applied research activities, and develop improved infectious disease prevention and control strategies. These efforts will lead to a better understanding of baseline infectious disease incidence and prevalence, so that ''unusual'' disease occurrences will be more readily recognized and accurately addressed. As infectious diseases do not respect international boundaries, outbreaks virtually anywhere may threaten the health of the United States, and the improved surveillance activities will offer national, international, and global early warning of new and unusual diseases so that effective interventions can be promptly instituted.

Program Requirements

In carrying out the activities under this program, WHO will be responsible for the activities under A., below, and CDC will be responsible for the activities under B., below:

A. Recipient Activities

1. Identify geographic areas, on a global basis, for implementation and evaluation of infectious disease surveillance activities.

2. Develop and evaluate strategies to enhance national, regional, and global infectious disease surveillance.

3. Analyze national resources devoted to infectious disease diagnosis to identify critical shortfalls in human, technical, and equipment resources, then develop and implement plans to resolve recognized deficiencies.

4. Conduct a program of applied research focusing on recognition and response to emerging infectious diseases.

5. Build international networks of collaborating laboratories for the rapid acquisition and exchange of surveillance and monitoring information.

6. Coordinate activities with other relevant agencies, organizations, and individuals to facilitate development, implementation, and evaluation of infectious disease prevention and control programs.

7. Monitor and evaluate program performance.

B. CDC Activities

1. Collaborate in the design of research protocols.

2. Assist in the analysis and interpretation of data generated from each project.

3. As needed, provide other programmatic consultation and guidance in support of the program.

4. Provide continuing updates on scientific and operational developments in emerging infectious diseases.

5. Participate in the development of plans for the sharing and dissemination of program and research data and information.

6. Assist in defining the scope, the development, and dissemination of plans for emerging infectious disease prevention, research, and control.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

A. Needs Statement: The extent to which the applicant identifies specific needs related to the purposes of the program. (20 Points)

B. Objectives: The degree to which short-term and long-term objectives are specific, time-phased, measurable, and realistic. (20 Points)

C. Operational Plan: The adequacy of the applicant's plan to carry out the proposed activities. (20 Points)

D. Evaluation Plan: The extent to which the evaluation plan appears capable of monitoring progress toward meeting project objectives. (20 Points)

E. Program Management: The extent to which proposed staff are necessary, appropriate, and qualified to perform the proposed activities. (20 Points)

F. Budget: The extent to which the budget is reasonable and consistent with the purpose and objectives of the program. (Not Weighted)

Executive Order 12372 Review

This application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget

(OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The WHO must submit an original and two copies of the application Form PHS–5161–1 (Revised 7/92, OMB Number 0937–0189) to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before August 21, 1995.

Where To Obtain Additional Information

If you are interested in obtaining additional information on this program, please refer to Announcement Number 567 and contact Gordon R. Clapp, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from Pat McConnon, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop C–12, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–2175, Email address: PJM2@CIDOD1.EM.CDC.GOV.

Please refer to Announcement Number 567 when requesting information regarding this program.

WHO may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Summary through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: July 17, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18026 Filed 7–20–95; 8:45 am]

BILLING CODE 4163–18–P

[Announcement Number 539]

Cooperative Agreement for Provider-Based Emerging Infections Sentinel Networks

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds to provide assistance for the establishment of one to three provider-based Emerging Infections Sentinel Networks (EISN). These networks will assess emerging infectious diseases, including drug-resistant, food borne and waterborne, and vaccine-preventable or potentially vaccine-preventable diseases.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301 and 317 of the Public Health Service Act, 42 U.S.C. 241 and 247b, as amended.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority-and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $250,000 is available in FY 1995 to fund one to three awards. It is expected that the average award will be $125,000, ranging from $75,000 to $250,000. It is expected that awards will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this cooperative agreement is to assist recipients in establishing EISNs for assessing emerging infections. These networks will be valuable in learning about specific problems in emerging infectious diseases and also in serving as readily accessible surveillance mechanisms to address emergent public health infectious disease problems rapidly.

A list of potential provider-based EISNs and possible subject areas for surveillance follows. This list is provided for illustration, not to limit the proposed range of provider-based EISNs or specific projects.

—Adult Infectious Diseases Practitioners (e.g., encephalitis, febrile deaths of unknown etiology). These could be combined with a network of pediatric infectious disease practitioners.
—Pediatric Infectious Disease Practitioners (e.g., encephalitis, otitis media refractory to antibiotics, group A streptococcal complications of varicella). These could be combined with a network of adult infectious disease practitioners.
—Emergency Departments (e.g., bloody diarrhea, first- time seizures possibly caused by cysticercosis, patterns of use of post-exposure rabies prophylaxis).
—Travel Medicine Clinics (e.g., malaria, dengue fever, other parasitic diseases in travelers).
—Clinical Microbiology Laboratories (e.g., drug- resistant infections, infections by new or unusual organisms).
—Family Practitioners (e.g., community-acquired pneumonia).
—Internists
—Pediatricians (e.g., otitis media treatment failures, rash and fever where no vaccine-preventable disease is identified).

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Establish an EISN by developing a new sentinel network for assessing emerging infectious diseases or modifying or expanding an existing network. Organize the EISN around a specific group of providers, i.e., blood banks, clinical microbiology laboratories, emergency rooms, family practitioners, gynecologists, internists, infectious disease specialists, pediatricians, medical examiners, travel and tropical medicine clinics, etc. EISNs must be sufficiently flexible to be engaged swiftly to address emergent problems in infectious diseases.

2. In collaboration with CDC, conduct one or more specific emerging infectious disease surveillance projects focused on particular syndromes, diseases, conditions, events, etc.

3. Analyze, present, and publish the results of surveillance projects collaboratively with CDC.

4. In collaboration with CDC:

a. Focus and/or redirect surveillance projects as indicated through critical review of data and evaluation of various surveillance projects; and

b. Consider and initiate novel methods of surveillance for emerging infectious diseases; develop and modify as necessary methods for management and communication of information commensurate with requirements of the network.

5. Monitor and evaluate scientific and operational accomplishments of the EISN and progress in achieving the purpose and overall goals of this program.

B. CDC Activities

1. Provide consultation and scientific and technical assistance in establishing the EISN and in designing and conducting specific surveillance projects. Participate in the selection of EISN projects and collaborate as necessary to address new emerging infectious disease issues.

2. Participate in analysis, publication, and dissemination of information and data gathered from EISN projects.

3. Assist in monitoring and evaluating scientific and operational accomplishments of the EISN and progress in achieving the purpose and overall goals of this program.

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Understanding the Objectives of the EISN (10 points)

The extent to which the applicant demonstrates a clear understanding of the objectives of this cooperative agreement program.

2. Capacity (30 points)

a. For new networks, the extent to which the applicant demonstrates the capacity to establish a provider-based EISN, including description of the applicant's qualifications and standing to represent a group of providers in a national network and a description of the professional relationships that qualify applicant to propose an EISN representative of a group of providers.

For existing networks, the extent to which the applicant describes how it fills the need for an EISN; the extent to which the applicant describes the niche that the proposed EISN will fill that is not currently filled by other surveillance systems. The extent to which the applicant comments on the long-term potential of the network to provide important information for public health.

b. The extent to which the applicant describes past experience in conducting infectious disease surveillance and/or applied research in infectious diseases, particularly public health-related work. The extent to which the applicant describes past experience in conducting surveillance specifically for emerging infectious diseases, including drug-resistant, food borne and waterborne, and vaccine-preventable or potentially vaccine-preventable diseases.

c. The extent to which the applicant provides letters of support from non-applicant participating agencies, institutions, organizations, individuals, consultants, etc., identified in applicant's operational plan. The extent to which the letters of support clearly indicate the signatory's willingness to participate in the EISN (e.g., as sources of surveillance information or members of the network).

3. Operational Plan (40 points)

a. The extent to which the applicant distinguishes whether the EISN is an extension of an existing surveillance network or a new network. If it is an extension of an existing network, the extent to which the applicant provides a complete and detailed description of the existing network.

b. The extent to which applicant provides a detailed and time-phased plan for establishing and operating the EISN, which clearly describes the proposed organizational and operating structure/procedures for accomplishing all Recipient Activities. The extent to which the applicant describes agreements currently in place with potential participants in the network, describes what new agreements with potential participants will be necessary, and the likelihood that these agreements can be implemented promptly. The extent to which the applicant intends and describes plans to collaborate with CDC in the establishment and operation of the EISN and in the planning of individual surveillance projects, including planning and development of projects, management and analysis of data, and synthesis and dissemination of findings. The extent to which applicant's plan is consistent with and adequate to accomplish the purpose and objectives of this program.

c. The extent to which the applicant clearly identifies and describes the EISN participants/sources of surveillance information. The extent to which the applicant describes the structure of the EISN ''network'', such as number, location, etc., of sites or surveillance information sources. The extent to which the applicant describes procedures and mechanisms to transfer information between EISN participants and the central data collection point.

d. The extent to which the applicant's proposed specific surveillance projects are appropriate for the participants/sources in the network and address significant emerging syndromes, diseases, conditions, events, etc. The extent to which applicant clearly identifies specific diseases or conditions (e.g., notifiable diseases, food borne and waterborne diseases, and drug-resistant infections) which will be addressed. The extent to which the applicant describes how cases will be defined, what information will be collected for each case, and the likelihood that such cases will occur with sufficient frequency to provide useful public health information. The extent to which these projects appear feasible and the likelihood they can be successfully conducted.

e. The extent to which the applicant clearly describes how its design for the EISN is flexible and able to swiftly address new public health challenges in infectious diseases.

f. The extent to which the applicant describes an appropriate and effective process for providing necessary information to State and local health departments and appropriate others about findings related to notifiable conditions.

4. Project Management and Staffing (10 points)

The extent to which applicant identifies professional and support staff who have the knowledge, experience, and authority to carry out recipient activities as evidenced by job descriptions, curricula vitae, organizational charts, etc.

5. Evaluation (10 points)

The quality of the proposed plan for monitoring progress in achieving the purpose and overall goals of this program.

6. Budget (Not Scored)

The extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If SPOCs or tribal governments have any process recommendations on applications submitted to CDC, they should forward them to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–18, Room 314, Atlanta, GA 30305. The due date for State process recommendations is 30 days after the application deadline date for new and competing continuation awards. (A waiver for the 60 day requirement has been requested). The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application Form PHS–5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before August 21, 1995.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b., above, are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from Robert W. Pinner, M.D., Special Assistant for Surveillance, Office of the Director, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop C–12, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–2603.

Please refer to Announcement Number 539 when requesting information regarding this program.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512- 1800.

Potential applicants may obtain a copy of Addressing Emerging Infectious Disease Threats: A Prevention Strategy for the United States through the Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, Office of Planning and Health Communication—EP, Mailstop C–14, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Requests may also be sent by facsimile to (404) 639–3039.

Dated: July 17, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18024 Filed 7–20–95; 8:45 am]

BILLING CODE 4163–18–P

[Announcement Number 543]

Cooperative Agreement for State Epidemiology and Laboratory Surveillance and Response

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement program to ensure adequate capacity of local, State, and national efforts to conduct epidemiology and laboratory surveillance and response for infectious diseases.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of

Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section **Where to Obtain Additional Information**.)

Authority

This program is authorized under Sections 301(a) [42 U.S.C. 241(a)] and 317 [42 U.S.C. 247b] of the Public Health Service Act, as amended. Applicable program regulations are found in 42 CFR Part 51b, Project Grants for Preventive Health Services and 42 CFR Part 52, Grants for Research Projects.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. In addition, official public health agencies of county or city governments with jurisdictional populations greater than 3,500,000 (based on 1990 census data) are eligible.

Availability of Funds

Approximately $2,000,000 is available in FY 1995 to fund eight to twelve awards. It is expected that the average award will be approximately $170,000, ranging from $70,000 to $250,000. It is expected that the awards will begin on or about September 30, 1995, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this cooperative agreement is to assist State public health agencies in strengthening, maintaining, and enhancing capacity for public health surveillance and response for infectious diseases.

Awards are intended to support the enhancement of existing basic surveillance and response capacity including the development and application of innovative surveillance approaches with a focus on notifiable diseases, foodborne and waterborne diseases, and drug- resistant infections.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for addressing some or all of the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop public health capacity for surveillance and response for infectious diseases, including flexible surveillance and response capability to meet the challenges of new and emerging infectious diseases.

2. Implement public health surveillance and response measures for infectious diseases surveillance.

3. Develop and apply innovations in public health surveillance and response for infectious diseases. Examples of such innovations include:

a. Enhance rapid reporting of infectious diseases from clinical laboratories, such as electronic reporting of data already existing in clinical laboratory computer databases;

b. Integrate laboratory-based and clinician-based surveillance information;

c. Develop sentinel approaches for surveillance for certain infectious diseases;

d. Develop relationships with managed care organizations to conduct infectious disease surveillance within their patient populations;

e. Improve use of existing sources of information for infectious diseases surveillance, such as development of a system for surveillance of pneumonia through radiology records, or trends in emergency room visits for diarrhea or pneumonia; and

f. Serve as a regional resource for State health laboratory activities in one or more specific areas, for example, serotyping of E. coli or subtyping of legionella from suspected outbreaks.

4. Develop an approach for integrating surveillance information from the State epidemiology and laboratory units to improve early response and disease intervention activities.

5. Develop and implement a plan to ensure that clinical laboratories submit isolates of designated organisms of public health importance to the State laboratory. Plans should be flexible enough to include new infectious disease problems such as those which occurred with Hantavirus, E. coli 0157:H7, and recent multidrug resistant organisms.

6. Develop and implement long- and short-term training for epidemiology and laboratory staff that is consistent with the purpose of this agreement.

7. Monitor and evaluate scientific and operational accomplishments and progress in achieving the purpose of this program.

B. CDC Activities

1. Provide consultation and assistance in establishing enhanced reporting from laboratories and health care practitioners and in developing response capability.

2. Assist in monitoring and evaluating scientific and operational accomplishments and progress in achieving the purpose of this program.

3. Assist in supporting training activities for the development of epidemiology and laboratory staff in recipient States.

Evaluation Criteria

The applications will be reviewed and evaluated according to the following weighted criteria:

A. Understanding the objectives of the State Epidemiology and Laboratory Capacity Building Program: The extent to which the applicant demonstrates a clear understanding of the background and objectives of this program. (10 points)

B. Description of area under surveillance: The extent to which the applicant clearly describes the following information for the State (or appropriate jurisdiction if applicant is a county, city, or other agency): demographic characteristics, population, geographic size, distribution of racial/ethnic minorities, and existing healthcare delivery systems for Medicaid and Medicare patients. (5 points)

C. Description of existing public health infectious disease epidemiology and laboratory capacity. (15 points)

1. Extent to which the applicant describes the scope of its existing surveillance and response activities in infectious diseases with respect to epidemiology and laboratory activities. Extent to which the applicant includes descriptions of reporting requirements, spectrum of laboratory specimen testing performed, degree of automation of laboratory and epidemiologic information management, and public health response capacity.

2. Extent to which the applicant describes existing staffing, management, material and equipment investment, training, space, and financial support of

laboratory and epidemiologic capacity for public health surveillance and response for infectious diseases.

3. The extent to which the applicant:

a. Describes collaboration between its existing epidemiology and laboratory programs in terms of laboratory-based surveillance and health care practitioner surveillance, including the existence of or potential for an integrated surveillance approach;

b. Describes current or previous collaborative relationships with clinical laboratories, local health agencies, academic medicine groups, and health care practitioners, including HMOs or managed care providers;

c. Demonstrates the potential of these relationships for enhanced surveillance and public health response activities; and

d. Demonstrates an understanding of the interaction between public health, managed care, and the emerging health care delivery system.

D. Identification of areas of need and potential areas for innovation in public health surveillance and response for infectious diseases:

1. The extent to which the applicant identifies and describes needs in capacity (epidemiology and laboratory) for public health surveillance and response for infectious diseases. (25 points)

2. The extent to which the applicant identifies potential areas for development and application of innovative approaches to surveillance and response for infectious diseases (15 points). Examples include, but are not limited to:

a. Enhancement of rapid reporting of infectious disease from clinical laboratories for diseases in which such laboratories are an important source of surveillance information;

b. Integration of laboratory-based and clinician- based surveillance information;

c. Development of sentinel approaches for surveillance for certain infectious diseases;

d. Development of relationships with managed care organizations to conduct infectious disease surveillance within their patient populations;

e. Exploration of existing sources of data for infectious diseases surveillance (e.g., vital statistics, hospital discharge records, radiology records, insurance claims data, pharmacy records, and data from managed care organizations and HMOs); and

f. Service as a regional resource for State health laboratory activities in one or more specific areas, for example, serotyping of E. coli or subtyping of legionella from suspected outbreaks.

E. Operational Plan (25 points):

1. The extent to which the applicant:

a. Presents a plan for building capacity for public health surveillance and response for infectious diseases which clearly describes the proposed organizational and operating structure/ procedures, staffing plan, participating agencies, organizations, institutions, and key individuals;

b. Describes plans for using the surveillance data to help implement public health responses; and

c. Provides letters of support from participating agencies, institutions, and organizations indicating their willingness to participate in major surveillance and public health response initiatives.

2. The extent to which the applicant's plan includes development and application of innovative approaches to surveillance and response for infectious diseases (examples of which are listed in paragraph D., above). The extent to which the applicant identifies specific important diseases or conditions (e.g., notifiable diseases, foodborne and waterborne diseases, and drug-resistant infections) which will be addressed. If applicant proposes to serve as a regional resource for State health laboratory activities, the extent to which the applicant specifies: (1) activities (e.g., providing regional testing for Hantavirus, or other infections or diseases) and (2) States that will be served (including letters of support from these States).

3. The extent to which applicant's plan is consistent with, and adequate to achieve, the purpose and objectives of this program.

F. The extent to which the applicant describes a detailed plan for monitoring and evaluation that will show the operational achievements and impact of the project. (5 points)

G. The extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds. (Not Scored)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.)12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact(SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If SPOCs or tribal governments have any process recommendations on applications submitted to CDC, they should forward them to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–18, Room 314, Atlanta, Georgia 30305. The due date for State process recommendations is 30 days after the application deadline date for new and competing continuation awards. (A waiver for the 60 day requirement has been requested). The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application Form PHS–5161–1 (Revised 7/92) must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before August 21, 1995.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal

Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from Pat McConnon, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop C–12, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–2175, Email Address: PJM2@CIDOD1.EM.CDC.GOV.

Please refer to Announcement Number 543 when requesting information regarding this program.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: July 17, 1995.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–18023 Filed 7–20–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 95N–0173]

Procter & Gamble Pharmaceuticals, Inc., et al.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 16 new animal drug applications (NADA's). Fourteen NADA's are held by Procter & Gamble Pharmaceuticals, Inc., and one each is held by Lemmon Co. and Happy Jack, Inc. The firms notified the agency in writing that the animal drug products were no longer marketed and requested that the approval of the applications be withdrawn. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the entries which reflect approval of the NADA's.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: The sponsors of the applications listed in the table in this document have informed FDA that these animal drug products are no longer marketed and have requested that FDA withdraw approval of the applications.

NADA No.	Drug name	Sponsor name and address
10–158	Furamazone, bismuth subsalicylate bolus	Procter & Gamble Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815
10–358	Nitrofurantoin tablets and boluses	do
12–291	Nitrofurantoin oral suspension	do
12–612	Nitrofurazone, nifuroxime, diperodon hydrochloride (HCl) ear solution.	do
34–716	Buquinolate	do
35–314	Buquinolate and bacitracin zinc	do
35–315	Buquinolate, bacitracin zinc, and penicillin	do
35–317	Buquinolate and penicillin	do
35–327	Buquinolate, bacitracin methylene disalicylate (bacitracin MD), and penicillin.	do
35–329	Buquinolate and bacitracin MD	do
38–657	Buquinolate and chlortetracycline	do
39–925	Buquinolate and roxarsone combination	do
39–926	Buquinolate and roxarsone	do
41–744	Nitrofurantoin sodium injection	do
95–017	Etorphine HCl injection and diprenorphine HCl injection.	Lemmon Co., Sellersville, PA 18960
115–580	Piperazine adipate powder	Happy Jack, Snow Hill, NC 28580

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 10–158, 10–358, 12–291, 12–612, 34–716, 35–314, 35–315, 35–317, 35–327, 35–329, 38–657, 39–925, 39–926, 41–744, 95–017, 115–580, and all supplements and amendments thereto is hereby withdrawn, effective July 31, 1995..

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 520.1560, 520.1560a, 520.1560b, 520.1801, 520.1801a, 522.1563, 524.1580a, 558.62(c)(2)(v), 558.105, 558.128(c)(5)(iii), 558.325(c)(3)(iv), 558.460(c)(2)(v), and 558.530(d)(3)(vii), and amending 21 CFR 510.600(c), 522.723, and 522.883 to reflect the withdrawal of approval of the above mentioned NADA's.

Dated: July 13, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–17924 Filed 7–20–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket Nos. 95P–0061, 95S–0117, 95S–0126, and 95S–0135]

Patent Term Expiration Dates for Patents Extended by the Uruguay Round Agreements Act; Submission by Applicants of New Drug and New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its position on patent information submitted by applicants of new drug applications (NDA's) and new animal drug applications (NADA's). Patent term expiration dates for certain patents that are subject to both the Uruguay Round Agreements Act (URAA) and the patent term extension provisions of the United States Code should be calculated in accordance with the Patent and Trademark Office's (PTO's) determination of June 7, 1995. FDA will not publish dates that the NDA or NADA applicant states are not calculated in accordance with the June 7, 1995, determination. This document is intended to advise all NDA and NADA applicants who submitted URAA-extended patent term expiration dates that were not calculated in accordance with the PTO's determination to submit corrected patent term expiration dates to the agency.

DATES: NDA and NADA applicants that submitted inaccurate patent term expiration dates should submit patent term expiration dates calculated in accordance with the PTO's determination by August 21, 1995.

ADDRESSES: Two copies of amended patent information pertaining to human drug products regulated under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) by CDER should be submitted to the assigned reviewing division. The submission should bear the pertinent NDA number.

Two copies of amended patent information pertaining to human drug products regulated under section 505 of the act by CBER should be submitted to the Document Control Center, Center for Biologics Evaluation and Research (HFM–99), Food and Drug Administration, suite 200N, Rockville, MD 20852.

A third copy of the amended patent information pertaining to human drug products regulated under section 505 of the act by either the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) should be sent to the Division of Drug Information Services (HFD–85), Center for Drug Evaluation and Research, Food and Drug Administration, 1901 Chapman Ave., rm. 212, Rockville, MD 20852.

Amended patent information pertaining to animal drug products should be sent to the Document Control Unit, Center for Veterinary Medicine (HFV–199), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 8, 1995 (60 FR 30309), FDA announced the availability of the agency's response to a citizen petition from Glaxo, Inc., requesting that FDA explain how the URAA affects the patent information submission and patent certification requirements for applications to market drug products under the act. In that notice, FDA directed that amended patent information, reflecting extended patent term expiration dates under the URAA, be submitted to FDA between June 8 and July 8, 1995.

On June 7, 1995, the PTO published a notice in the **Federal Register** (60 FR 30069) entitled ''Determination of New Expiration Dates of Certain Patents'' (the PTO's determination) that established the method for calculating the patent term expiration date for any patent subject to both the terms of the URAA and the patent term extension provisions at 35 U.S.C. 156. FDA has received from several NDA or NADA applicants submissions of new patent term expiration dates which the applicant submitting the information states were not calculated in accordance with the PTO's determination. In order to comply with the requirements of sections 505(b) and 512(b) (21 U.S.C. 360b(b)) of the act and 21 CFR 314.53, NDA and NADA applicants must submit accurate patent information. For the expiration dates for patents that received patent term extension under the URAA to be accurate, those dates must be calculated in accordance with the PTO's determination.

FDA is advising all NDA and NADA applicants who submitted URAA-extended patent term expiration dates that were not calculated in accordance with the PTO's determination to submit corrected patent term expiration dates to the agency by August 21, 1995. If the applicant has already submitted patent expiration dates that are consistent with the PTO's determination, no additional submission is necessary. FDA will not verify the patent expiration dates submitted by NDA and NADA applicants. FDA will not publish any patent expiration date that the submitter states is not consistent with the PTO's determination.

The agency will publish the new patent term expiration dates submitted during the June 8 to July 8, 1995, period that are not expressly identified by the applicant submitting the information as having been calculated in a manner inconsistent with the PTO's determination. FDA anticipates that the procedures set out in § 314.53(f) will govern with respect to challenges by third parties that the submitted patent term expiration date was not calculated in accordance with the PTO's determination. For these challenges, the procedures set out in § 314.53(f) will be modified so that, if the applicant submitting the challenged patent term expiration date fails to notify FDA within 30 days of receiving notification from the agency of a challenge to the patent that the submitted date is consistent with the PTO's determination, FDA will not continue to publish the challenged date.

Two copies of amended patent information pertaining to human drug products regulated under section 505 of the act by CDER should be submitted to the assigned reviewing division. The submission should bear the pertinent NDA number.

Two copies of amended patent information pertaining to human drug products regulated under section 505 of the act by CBER should be submitted to the Document Control Center, Center for Biologics Evaluation and Research (HFM–99), Food and Drug Administration, suite 200N, Rockville, MD 20852.

To expedite the availability to the public of the updated patent information, a third copy of the amended patent information pertaining to human drug products regulated under section 505 of the act by either CDER or CBER should be sent to the Division of Drug Information Services (HFD–85), Center for Drug Evaluation and Research, Food and Drug Administration, 1901 Chapman Ave., rm. 212, Rockville, MD 20852.

Amended patent information pertaining to animal drug products

should be sent to the Document Control Unit, Center for Veterinary Medicine (HFV–199), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

Dated: July 18, 1995,

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–18079 Filed 7–19–95; 11:00 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0207]

Owen/Galderma, et al.; Withdrawal of Approval of 1 New Drug Application, 23 Abbreviated New Drug Applications, and 5 Abbreviated Antibiotic Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 1 new drug application (NDA), 23 abbreviated new drug applications (ANDA's), and 5 abbreviated antibiotic applications (AADA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Lola Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Appication no.	Drug	Applicant
ANDA 18–795	Hydrocortisone Butyrate Cream, 0.1%	Owen/Galderma, 6201 South Freeway, P.O. Box 6600, Forth Worth, TX 76115.
NDA 50–610	Erythromycin U.S.P. for Extemporaneous Compounding of Topical Solutions.	Paddock Laboratories, Inc., P.O. Box 27286, Minneapolis, MN 55427.
AADA 62–656	Nystatin and Triamcinolone Acetonide Ointment, U.S.P.	Pharmafair, Inc., 8500 Hidden River Pkwy., Tampa, FL 33637.
AADA 62–657	Nystatin and Triamcinolone Acetonide Cream, U.S.P.	Do.
AADA 63–183	Cefamandole Naftate for Injection, U.S.P., bulk	Richmar International, Inc., 1706 Birch Rd., McLean, VA 22101.
AADA 63–184	Sterile Cefamandole Naftate, U.S.P	Do.
AADA 64–018	Amikacin Sulfate, U.S.P., nonsterile bulk	Do.
ANDA 70–077	Nitroglycerin Injection, U.S.P., 5 milligrams (mg)/milliliter (mL).	Fujisawa USA, Inc., 3 Parkway North, 3rd floor, Deerfield, IL 60015–2548.
ANDA 70–524	Dephenhydramine Hydrochloride Syrup, 12.5 mg/5 mL.	The Procter and Gamble Co., Sharon Woods Technical Center, 11450 Grooms Rd., Cincinnati, OH 45242–1434.
ANDA 70–648	Naloxone Hydrochloride Injection, U.S.P., 0.02 mg/mL.	Fujisawa USA, Inc.
ANDA 70–649	Naloxone Hydrochloride Injection, U.S.P., 0.04 mg/mL.	Do.
ANDA 72–191	Clofibrate Capsules, U.S.P., 500 mg	Geneva Pharmaceuticals, Inc., 2555 West Midway Blvd., P.O. Box 446, Broomfield, CO 80038–0446.
ANDA 83–951	Acetaminophen and Codeine Phosphate Tablets, U.S.P., 300 mg/30 mg and 300 mg/60 mg.	Burroghs Wellcome Co., 3030 Cornwallis Rd., P.O. Box 12700, Research Triangle Park, NC 27709–2700.
ANDA 83–963	Quinidine Sulfate Tablets, U.S.P., 200 mg	Vintage Pharmaceuticals, Inc., 3241 Woodpark Blvd., Charlotte, NC 28206.
ANDA 84–301	Hydralazine Hydrochloride Tablets, U.S.P., 25 mg	Lemmon Co., Inc., 650 Cathill Rd., Sellersville, PA 18960.
ANDA 84–969	Hydrocortisone Ointment, U.S.P., 0.5%	Clay-Park Labs., 1700 Bathgate Ave., Bronx, NY 10457.
ANDA 84–970	Hydrocortisone Cream, U.S.P., 0.5%	Do.
ANDA 85–026	Hydrocortisone Cream, U.S.P., 1%	Do.
ANDA 85–500	Phentermine Hydrochloride Tablets, U.S.P., 8 mg	Lemmon Co.
ANDA 85–662	Hydrocortisone Lotion, U.S.P., 0.5%	Clay-Park Labs.
ANDA 86–095	Chlorpheniramine Maleate Injection, U.S.P., 100 mg/mL.	Steris Laboratories, Inc., P.O. Box 23160, Phoenix, AZ 85063–3160.
ANDA 86–606	Aminophylline Injection, U.S.P., 25 mg/mL	King Pharmaceuticals, Inc., 501 Fifth St., Bristol, TN 37620.
ANDA 88–123	Isosorbide Dinitrate Tablets, U.S.P., 10 mg, sublingual.	Zeneca Pharmaceuticals, 1800 Concord Pike, P.O. Box 15437, Wilmington, DE 19850–5437.
ANDA 88–407	Aminophylline Injection, U.S.P., 25 mg/mL, 100 mL vials.	Fujisawa USA, Inc.
ANDA 88–448	Dexamethasone Sodium Phosphate Injection, U.S.P., 4 mg/mL, vials.	Do.
ANDA 88–645	Dicyclomine Hydrochloride Capsules, U.S.P., 20 mg.	Lemmon Co.

Appication no.	Drug	Applicant
ANDA 89–222	Hydralazine Hydrochloride Tablets, U.S.P., 50 mg	Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.
ANDA 89–252	Isoetharine Hydrochloride Inhalation Solution, U.S.P., 1%.	Dey Laboratories, 2751 Napa Valley Corporate Dr., Napa, CA 94558.
ANDA 89–554	Hydrocodone Bitartrate and Acetaminophen Tablets, U.S.P., 5 mg/500 mg.	Halsey Drug Co., Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications and supplements thereto, is hereby withdrawn, effective August 21, 1995.

Dated: July 5, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–17923 Filed 7–20–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Dental Drug Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. August 14 and 15, 1995, 9 a.m., Parklawn Bldg., conference room G, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, August 14, 1995, 9 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open public hearing, August 15, 1995, 9 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; Jeanne L. Rippere or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD–813), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1003, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel of the Medical Devices Advisory Committee, code 12518.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before August 9, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The subcommittee will continue with its discussion begun during the December 5 through 7, 1994, meeting, and continued at the April 10 through 12, 1995, meeting on developing general guidelines for determining the safety and effectiveness of antiplaque and antiplaque-related drug products. The subcommittee will also begin discussion on the safety and effectiveness of the ingredient cetylpyridinium chloride and a product containing an enzyme blend (amylase, protease, and lipase) with aloe vera for antiplaque and antiplaque-related uses.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. August 28, 1995, 9 a.m., Holiday Inn—Bethesda, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or Valerie M. Mealy, Advisors and Consultants Staff (HFD–9), 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Cardiovascular and Renal Drugs Advisory Committee, code 12533.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the

committee. Those desiring to make formal presentations should notify the contact person before August 18, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss development of a clinical program for study of nitric oxide in the treatment of primary pulmonary hypertension in newborns.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 11, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–17918 Filed 7–20–95; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 7 and 8, 1995, 9 a.m., Gaithersburg Hilton Hotel, Ballroom Salons C, D, and E, 620 Perry Pkwy., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–977–8900, and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Closed committee deliberations, August 7, 1995, 9 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open public hearing, August 8, 1995, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Djuana Blagmon, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Hematology and Pathology Devices Panel, code 12515.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data,

information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 28, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss two premarket approval applications for automated cervical cytology readers intended for use in the quality control and rescreening of previously read Papanicolaou smears.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding pending or future device submissions. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. August 8 and 9, 1995, 8:30 a.m., Bethesda Marriott Hotel, Grand Ballroom Salons A, B, and C, 5151 Pooks Hill Rd., Bethesda, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–897–9400 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Closed presentation of data, August 8, 1995, 8:30 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 6 p.m.; open public hearing, August 9, 1995, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 6 p.m.; Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–8897, or FDA Advisory Committee Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel, code 12518.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 1, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The Dental Products Panel began the process of classification of bone filling and augmentation devices on February 11, 1993. On August 8, 1995, the committee will continue the discussion of the proposed classification status for bone filling and augmentation devices. The discussion will focus on streamlining the groupings and descriptions of materials before making final classification recommendations, which are expected to be completed at this meeting. On August 9, 1995, the committee will continue the discussion of bone filling and augmentation devices for oral use, if necessary, and will discuss and vote on dental device recommendations for ingredient labeling, and will discuss a guidance document for dental handpieces.

Closed presentation of data. On August 8, 1995, a sponsor will present to the committee trade secret and/or confidential commercial information regarding a dental product. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. August 21, 1995, 8:30 a.m., and August 22, 1995, 9 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–984–8900 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Ed Rugenstein, Sociometrics, Inc., 301–608–2151. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Open public hearing, August 21, 1995, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 1:30 p.m.; closed presentation of data, 1:30 p.m. to 4:30 p.m.; open public hearing, August 22, 1995, 9 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; Ramiah Subramanian, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Circulatory System Devices Panel, code 12625.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 15, 1995, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On August 21, 1995, the committee will discuss general issues related to a premarket approval application (PMA) for an automatic cardiac defibrillator. On August 22, 1995, the committee will review and recommend: (1) The reclassification status for human heart valve allografts; and (2) the reclassification status of nonroller type cardiopulmonary bypass blood pumps (i.e., centrifugal pump) for short-term (6 hours or less) use.

Closed presentation of data. On August 21, 1995, FDA staff will present to the committee trade secret and/or confidential commercial information relevant to investigational device exemption applications and PMA's for cardiovascular system devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 17, 1995.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 95–17977 Filed 7–20–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HSQ–229–N]

CLIA Program; Approval of the American Osteopathic Association as an Accrediting Organization

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the approval of the American Osteopathic Association (AOA) as an accrediting organization for clinical laboratories under the Clinical Laboratory Improvement Amendments (CLIA) program. We have found that the accreditation process of this organization provides reasonable assurance that a laboratory accredited by it meets the conditions required by Federal law and regulations. Consequently, a laboratory that voluntarily becomes accredited by AOA and continues to meet AOA requirements, is deemed to meet the CLIA condition-level requirements for laboratories and, therefore, is not subject to routine inspection by State survey agencies to determine its compliance with Federal requirements. However, each laboratory is subject to validation and complaint investigation surveys conducted by HHS or its designee to determine that each laboratory meets CLIA requirements.

EFFECTIVE DATE: This notice is effective for the period July 21, 1995 through July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Todd, (410) 597–5906.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578. CLIA replaced in its entirety section 353 of the Public Health Service Act (PHSA), as enacted by the Clinical Laboratories Improvement Act of 1967, and made every laboratory in the United States and its territories that tests human specimens for health reasons subject to the requirements established by HHS, whether or not it participates in the Medicare or Medicaid programs. New section 353 requires HHS to establish certification requirements for any laboratory that performs tests on human specimens and certify through issuance of a certificate that a laboratory meets those certification requirements.

Section 6141 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, amended the Social Security Act (the Act) to require that a laboratory participating in the Medicare program meet the certification requirements of section 353 of the PHSA. Subject to specified exceptions, a laboratory must have a current unrevoked and unsuspended certificate to be eligible to participate in the Medicare or Medicaid programs or both. A laboratory that is accredited by an accreditation organization approved under section 353 of the PHSA is automatically eligible for Medicare and Medicaid participation as long as it meets applicable State licensure requirements.

Several additional rules have been published since the Congress enacted the CLIA requirements. Many of these rules gave non-Federal organizations the authority to act as an accrediting body to assure that a laboratory meets conditions required by Federal law and regulations. On February 28, 1992, we published several final rules in the **Federal Register** (57 FR 7002–7243) that implemented the amendments to section 353 of the PHSA. Specifically, regulations were established at 42 CFR part 493 that set forth the following:

- Require laboratories to pay fees for issuance of registration certificates, certificates of waiver, certificates of accreditation, or other applicable certificates and to fund activities to determine compliance with our performance requirements. (In a subsequent rule published January 19, 1993, 58 FR 5215, we added ''certificate for physician-performed microscopy procedures.'')
- Specify the performance requirements that apply to laboratories subject to CLIA (some of which were amended by the January 19, 1993 rule) and list requirements for laboratories performing certain limited testing to be eligible for a certificate of waiver.
- Set forth the rules for the enforcement of CLIA requirements on laboratories that are found not to meet Federal requirements.

On July 31, 1992, we issued a final rule (57 FR 33992), under the authority found in section 353(e)(2) of the PHSA, that permits us to approve a private, nonprofit organization as an accreditation organization for clinical laboratories under the CLIA program if that organization's requirements for its accredited laboratories are equal to or more stringent than the applicable CLIA program requirements established at part 493 of our regulations. Under § 493.501(d)(4) of our regulations, the approval period may not exceed 6 years.

In general, the accreditation organization must meet the following requirements that are set forth in part 493:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by HHS.
- Apply standards and criteria that are equal to or more stringent than those CLIA condition-level requirements for laboratories established by HHS when taken as a whole.
- Provide reasonable assurance that its standards and criteria are continually met by its accredited laboratories.
- Provide HHS with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited or revoked. HHS must receive this notification within 30 days of any adverse action against a laboratory.
- Notify HHS at least 30 days before the effective date of any proposed change in its standards.
- If HHS withdraws its approval for the organization to accredit laboratories, notify its accredited laboratories of the withdrawal within 10 days of the withdrawal.

Along with requiring us to publish criteria for approving an accreditation organization and for withdrawing the approval, CLIA requires HHS to annually evaluate the performance of the approved accreditation organization for compliance with the CLIA requirements by inspecting a sufficient number of laboratories accredited by the approved accreditation organization as well as by any other means that HHS determines appropriate. Under section 353(o) of the PHSA, HHS may, by agreement, use the services or facilities of any other Federal, State, or local public agency, or any private, nonprofit organization to conduct inspections of laboratories performing clinical testing on human specimens in the United States and its territories for the purpose of determining compliance with CLIA requirements.

II. Notice of Approval of AOA as an Accrediting Organization

This notice announces our decision to approve AOA as an organization that may accredit a laboratory for purposes of establishing its compliance with CLIA requirements for all specialty/subspecialty areas. We are approving AOA as an accreditation organization for the period July 21, 1995 through July 21, 1997.

AOA accredits laboratories for a 2-year period beginning with the date of the certification. Any laboratory that is accredited by AOA during this time period is deemed to meet the CLIA requirements found in part 493 of our regulations and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys that we perform, or any other Federal, State, or local public agency or nonprofit private organization performs, which acts in conformance with an agreement with HHS.

III. Evaluation of the AOA Request for Approval as an Accreditation Organization under CLIA

AOA formally applied to us for approval as an accreditation organization under CLIA for all specialties and subspecialties. We evaluated the AOA application to determine equivalency with our implementing and enforcement regulations, and the deeming/exemption requirements of the CLIA rules at 42 CFR part 493.

We also verified the organization's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of 42 CFR part 493 as explained below:

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

AOA submitted a list of the specialties and subspecialties that it would accredit; a comparison of individual accreditation and condition-level requirements; a description of its

inspection process, Proficiency Testing (PT) monitoring process, and its data management and analysis system; a list of the size, composition, education, and experience of its inspection teams; a description of its investigative and complaint response procedures; a description of its notification agreements with HCFA; a list of its procedures for removing or withdrawing laboratory accreditation; a current list of accredited laboratories; and an explanation of its announced or unannounced inspection process. We determined that AOA complies with the general requirements for an accreditation organization under § 493.501, the applicable parts of § 493.506 for approval of a private, nonprofit accreditation organization, and the CLIA requirements for approval as an accreditation organization under various subparts of part 493.

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both

AOA revised its requirements to be equivalent to the CLIA requirements at §§ 493.801 through 493.865 on an overall basis.

Subpart J—Patient Test Management for Moderate or High Complexity Testing, or Both

AOA revised its requirements to be equivalent to the CLIA requirements at §§ 493.1101 through 493.1111 on an overall basis.

Subpart K—Quality Control for Tests of Moderate or High Complexity, or Both

AOA revised its requirements to be equivalent to the CLIA requirements at §§ 493.1201 through 493.1285 on an overall basis.

Subpart M—Personnel for Moderate and High Complexity Testing

AOA revised its requirements to be equivalent to the CLIA requirements at §§ 493.1401 through 493.1495 on an overall basis.

Subpart P—Quality Assurance for Moderate or High Complexity Testing or Both

AOA revised its requirements to be equivalent to the CLIA requirements at §§ 493.1701 through 493.1721 on an overall basis.

Subpart Q—Inspections

AOA made revisions to its inspection process and will perform on-site inspections of the laboratory on a biennial basis so that it meets the applicable CLIA requirements at § 493.1777. Therefore, we have determined that AOA's requirements meet the requirements of subpart Q.

Subpart R—Enforcement Procedures for Laboratories

AOA meets the requirements of subpart R to the extent it applies to accreditation organizations. AOA policy stipulates the action it takes when a laboratory it accredits does not comply with its essential standards. When appropriate, AOA will deny, revoke, or limit a laboratory's accreditation and report the action to us within 30 days of initiating the action against the laboratory. AOA also provides an appeals process for a laboratory that has had its accreditation denied or revoked.

Some specific actions AOA takes in response to noncompliance or violation of essential standards include the following:

- If an AOA-accredited laboratory is identified as having intentionally referred a PT specimen to another laboratory, AOA revokes the laboratory's accreditation for 1 year.
- If an AOA-accredited laboratory is unsuccessful in PT participation for a Federally required analyte, subspecialty, and/or specialty, AOA terminates a laboratory's accreditation for that particular analyte, subspecialty and/or specialty. To regain accreditation, the laboratory must provide appropriate training and seek technical assistance to correct the problem(s) related to PT failure, and successfully participate in two consecutive PT events.
- If AOA determines that a serious risk of harm (for example, immediate jeopardy to patient health or safety) exists in an AOA-accredited laboratory, the laboratory must cease testing and immediately correct the problem that poses the risk. Failure to do so will result in a recommendation to the AOA Bureau of Healthcare Facilities Accreditation committee to deny that facility's accreditation. In addition, AOA will notify us within 10 days of its determination that the laboratory is no longer an AOA-accredited laboratory.

We have determined that AOA's laboratory enforcement and appeal policies are essentially equivalent to the requirements of subpart R as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

We may conduct Federal validation inspections of AOA-accredited laboratories, as specified in § 493.507, on a representative sample basis or in response to substantial allegations of noncompliance (called complaints). The outcome of those validation inspections, performed either by us, the State survey agency, or our agent, is our principal means for verifying that the laboratories accredited by AOA remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

Our regulations at § 493.511 provide that we may remove the approval of an accreditation organization, such as that of AOA before the end of the effective date of approval. If validation inspection outcomes and the comparability or validation review produce findings described at § 493.509(a), we conduct a review of an accreditation organization's program. We also conduct a review when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate systemic problems in the organization's processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to the CLIA requirements, taken as a whole.

If we determine that AOA has failed in practice to enforce its standards, or systemic problems exist in its inspection process, we may give it a probationary period, not to exceed 1 year, to allow AOA to conform its inspection or enforcement procedures to the CLIA requirements. Based on an evaluation of any of the items stipulated at § 493.511(d), we make a determination as to whether or not AOA retains its approved status as an accreditation organization under CLIA. If we deny approved status, AOA may revise its program to address the rationale for the denial, demonstrate that it can reasonably assure that its accredited laboratories meet CLIA condition-level requirements, and resubmit its application for approval as an accreditation organization in its entirety. If, however, AOA requests reconsideration of an adverse determination in accordance with subpart D of part 488 of our regulations, it may not submit a new application until we issue a final reconsideration determination.

Should circumstances result in AOA having its accreditation approval withdrawn, we will publish a notice in the **Federal Register** explaining the basis for removing its accreditation approval.

VI. Other

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: May 22, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–17979 Filed 7–20–95; 8:45 am]

BILLING CODE 4120–01–P

[HSQ–228–N]

CLIA Program; Approval of the American Association of Blood Banks

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the approval of the American Association of Blood Banks (AABB) as an accrediting organization for clinical laboratories under the Clinical Laboratory Improvement Amendments (CLIA) program. We have found that the accreditation process of this organization provides reasonable assurance that a laboratory accredited by it meets the conditions required by Federal law and regulations. Consequently, laboratories that are voluntarily accredited by the AABB and continue to meet the AABB requirements will be deemed to meet the CLIA condition level requirements for laboratories and therefore are not subject to routine inspection by State survey agencies to determine their compliance with Federal requirements. They are, however, subject to validation and complaint investigation surveys conducted by HHS or its designee.

EFFECTIVE DATE: This notice is effective for the period July 21, 1995 through July 21, 1997.

FOR FURTHER INFORMATION CONTACT: Tracey Mummert, (410) 597–5906.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578. CLIA replaced in its entirety section 353 of the Public Health Service Act (PHSA), as enacted by the Clinical Laboratories Improvement Act of 1967, and made every laboratory in the United States and its territories that tests human specimens for health reasons subject to the requirements established by HHS and Federal regulation whether or not it participates in the Medicare or Medicaid program. New section 353 requires HHS to establish requirements for any laboratory that performs tests on human specimens and certify, through issuance of a certificate, that those laboratories meet the requirements established by HHS.

Section 6141 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, amended the Social Security Act (the Act) to require that laboratories participating in the Medicare program meet the certificate requirements of section 353 of the PHSA. Subject to specified exceptions, laboratories must have a current unrevoked and unsuspended certificate to be eligible for reimbursement in the Medicare or Medicaid programs, or both. Laboratories that are accredited by an accreditation organization approved under section 353(e) of the PHSA will automatically be eligible for Medicare and Medicaid participation as long as they meet applicable State requirements.

On February 28, 1992, we published several final rules in the **Federal Register** (57 FR 7002–7243) that implemented the amendments to section 353 of the PHSA. Specifically, regulations were established at 42 CFR part 493 that:

- Require laboratories to pay fees for issuance of registration certificates, certificates of waiver, certificates of accreditation, or other applicable certificates and to fund activities to determine compliance with our performance requirements.
- Specify the performance requirements that apply to laboratories subject to CLIA and list requirements for laboratories performing certain limited testing to be eligible for a certificate of waiver.
- Set rules for the enforcement of CLIA requirements on laboratories that are found not to meet Federal requirements.

On July 31, 1992, we issued final rules (57 FR 33992), under authority in section 353(e)(2) of the PHSA, that permit us to approve a private, nonprofit organization as an accreditation organization for clinical laboratories under the CLIA program if that organization's requirements for its accredited laboratories are equal to, or more stringent than, the applicable CLIA program requirements established at part 493 of our regulations. Therefore, a laboratory accredited by an approved organization that meets and continues to meet all of the accreditation organization's requirements is deemed to meet CLIA condition level requirements. Subpart E of part 493 specifies the requirements an accreditation organization must meet in order to be approved. We may approve an accreditation organization under § 493.501(d) of our regulations for a period not to exceed 6 years.

In general, the accreditation organization must:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by HHS;
- Apply standards and criteria that are equal to, or more stringent than, those condition level requirements established by HHS when taken as a whole;
- Provide reasonable assurance that these standards and criteria are continually met by its accredited laboratories;
- Provide HHS, within 30 days, with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked;
- Notify HHS at least 30 days prior to changing its standards; and
- If HHS withdraws its approval, notify its accredited laboratories of the withdrawal within 10 days of the withdrawal.

Along with requiring the promulgation of criteria for approving an accreditation body and for withdrawing such approval, CLIA requires HHS to annually evaluate the performance of an approved accreditation body for compliance with the CLIA requirements by inspecting a sufficient number of laboratories accredited by the organization as well as by any other means that HCFA determines appropriate. Under section 353(o) of the PHSA, the Secretary may, by agreement, use the services or facilities of any other Federal, State or local public agency, or any private, nonprofit organization to conduct inspections of laboratories performing clinical testing on human specimens in the United States and its territories for the purpose of determining compliance with CLIA requirements.

II. Notice of Approval of AABB as an Accrediting Organization

In this notice, we approve the AABB as an organization that may accredit laboratories for purposes of establishing their compliance with CLIA requirements for the following specialty/subspecialty areas:

- Immunohematology
- Diagnostic Immunology
- Hematology
- Histocompatibility
- Routine Chemistry
- Toxicology

As a result of this determination, any laboratory that is accredited by AABB during the effective time period for an approved specialty/subspecialty is deemed to meet the CLIA requirements

for laboratories found in part 493 of our regulations for that specialty or subspecialty and, therefore, is not subject to routine inspection by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by HCFA, or by any other Federal or State or local public agency or nonprofit private organization which acts in conformance to an agreement with the Secretary.

III. Evaluation of the AABB Request for Approval as an Accreditation Organization under CLIA

The AABB formally applied to HCFA for approval as an accreditation organization under CLIA for the specialties of immunohematology, histocompatibility, hematology, diagnostic immunology and the subspecialties of routine chemistry and toxicology. We evaluated the AABB application to determine equivalency with our implementing and enforcement regulations, and the deeming/exemption requirements of the CLIA rules. We also verified the organization's assurance that it requires the laboratories it accredits to be, and that the organization is, in compliance with the following subparts of part 493 as explained below:

Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program.

The AABB submitted a list of all specialties and subspecialties that it would accredit, a comparison of individual accreditation and condition level requirements, a description of its inspection process, proficiency testing (PT) monitoring process, and its data management and analysis system, a listing of the size, composition, education and experience of its inspection teams, its investigative and complaint response procedures, its notification agreements with HCFA, its removal or withdrawal of laboratory accreditation procedures, its current list of accredited laboratories, and its announced or unannounced inspection process.

The AABB has additional requirements pertaining to waived testing. The AABB will routinely inspect laboratories that perform waived tests that are normally associated with blood centers and transfusion services. These laboratories will be inspected for good manufacturing practices and to verify that tests are performed according to manufacturer's instructions. In addition, the AABB requires that there be appropriately qualified personnel, that is, director, supervisor, testing personnel, for waived testing. Section 493.15 of the CLIA regulations requires only that a laboratory follow manufacturer's instructions and does not require routine inspections of waived testing.

We have determined that the AABB has complied with the general requirements under § 493.501, the applicable parts of § 493.506, and the CLIA requirements for approval as an accreditation organization under various subparts of part 493.

Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate or High Complexity, or Both

The AABB requires that its accredited laboratories performing histocompatibility testing participate in a local, State, or national PT program or cell exchange for all tests. The CLIA regulations do not require laboratories that perform histocompatibility testing to participate in a HCFA-approved PT program. Apart from this more stringent requirement for PT, the AABB has revised its requirements to be equivalent to the CLIA requirements at §§ 493.801 through 493.865 on an overall basis.

Subpart J—Patient Test Management for Moderate or High Complexity Testing, or Both

The AABB has revised its requirements to be equivalent to the CLIA requirements at §§ 493.1101 through 493.1111 on an overall basis.

Subpart K—Quality Control for Tests of Moderate or High Complexity, or Both

The quality control (QC) requirements of the AABB have been evaluated against the requirements of the CLIA regulations. The AABB has modified its survey process and made revisions to its standards encompassing general QC requirements as well as specialty and subspecialty QC in order to address some of the more general QC requirements of CLIA. As such, we have determined that the AABB's requirements, when taken as a whole, are equal to or more stringent than the CLIA requirements. The specific areas of QC that are more stringent are:

- The requirement that laboratories meet the AABB's QC requirements for all waived testing they perform;
- The requirement that laboratories maintain histocompatibility records for 5 years;
- The requirement for compliance with standards for parentage testing;
- The application of all requirements for moderate complexity testing to testing categorized as provider-performed microscopy procedures, as of April 25, 1995.

Subpart M—Personnel for Moderate and High Complexity Testing

The AABB has revised its requirements to equal the CLIA requirements at §§ 493.1403 through 493.1495 on an overall basis. The AABB states, as general policy under its personnel standards, that the laboratory must meet CLIA requirements for personnel qualifications. The CLIA requirements for personnel responsibilities are encompassed in the revisions made to the AABB standards.

Subpart P—Quality Assurance for Moderate or High Complexity Testing or Both

The AABB has revised its requirements to be equivalent to the CLIA requirements at §§ 493.1701 through 493.1721 on an overall basis. One specific area of quality assurance that is more stringent is the requirement that laboratories maintain quality assurance records for 5 years.

Subpart Q—Inspections

We have determined that the AABB's requirements for inspections are at least equivalent to the requirements of §§ 493.1775 through 493.1780 of this subpart.

Subpart R—Enforcement Procedures for Laboratories

The AABB meets the requirements of subpart R to the extent it applies to accreditation organizations. The AABB policy stipulates the action it takes when laboratories it accredits do not comply with its requirements and standards for accreditation. When appropriate, the AABB will deny, suspend or revoke accreditation in a laboratory using the AABB accreditation to meet the CLIA requirements and report that action to HCFA within 30 days. The AABB also provides an appeals process for laboratories that have had accreditation denied, suspended or revoked.

Some specific actions the AABB takes in response to non-compliance or violation of its requirements or standards for accreditation include:

- When the AABB determines that a serious risk of harm (immediate jeopardy) exists in an AABB-accredited laboratory, the laboratory must immediately correct the problem that poses the risk. Failure to do so will result in a recommendation to the AABB area chairman to suspend or revoke that facility's accreditation. In

addition, the AABB will notify HCFA within 10 days of this determination.

• When an AABB laboratory is unsuccessful in PT participation for a Federally-required analyte, subspecialty, and/or specialty, the laboratory will be contacted by the AABB and required to initiate corrective actions. Failure to submit an acceptable plan of remedial action to correct the problem may result in a focused, onsite survey or limitation of the laboratory's scope of accreditation for the particular analyte, specialty, and/or subspecialty. As applicable, to regain accreditation, the laboratory must provide the AABB with evidence that it has successfully participated in two consecutive PT events.

We have determined that the AABB's laboratory enforcement and appeal policies are essentially equivalent to the requirements of this part 493 subpart R as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections and continuing oversight of the AABB accredited laboratories will be conducted based on the regulations at §§ 493.507 and 493.509.

V. Removal of Approval as an Accrediting Organization

Our regulations at § 493.511 provide that we may rescind the approval of an accreditation organization, such as that of the AABB, for cause, prior to the end of the effective date of approval. If we determine that the AABB failed to adopt requirements that are equal to, or more stringent than, the CLIA requirements, or that systemic problems exist in its inspection process, we may give it a probationary period, not to exceed one year, to allow the AABB to adopt comparable requirements.

Should circumstances result in our withdrawal of the AABB's approval, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: June 29, 1995

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–17981 Filed 7–20–95; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Prospective Grant of Exclusive License: Delta-Like Gene Expressed in Neuroendocrine Tumors

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent Application 07/989,537 and corresponding foreign patent applications entitled, ''Delta-Like Gene Expressed in Neuroendocrine Tumors'' to ImClone Systems Incorporated of New York, NY. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present patent application covers a novel gene, delta-like, dlk and its corresponding protein. The protein contains EGF-like repeats and a transmembrane domain and appears to be a novel member of the family of EGF-like neurogenic genes. Such genes were initially found in Drosophila and are involved in embryonic developmental decisions to differentiate into epidermal or neuronal cells. One of these genes in Drosophila is termed, ''Delta'', hence the name of the current gene. dlk can be employed in genetic assays for detection of a primary or secondary pheochromocytoma, neuroblastoma, and small cell lung cancer or identification of a stage of these tumors.

Although dlk may have utility as a cancer marker, recent research indicates another important application of this technology, as a hematopoietic stem cell growth factor. The adult bone marrow is the site of hematopoiesis with an estimated 0.01% of the cells being stromal cells. It is thought that the stem cells are found in micro-environments associated with stromal cells which produce factor(s) which allows the maintenance and self-renewal of the stem cells. One or more stromal cell produced factor(s) may be required to keep the stem cells in an uncommitted state. When stem cells leave this micro-environment they would no longer be in contact with this factor(s) and, consequently, they would differentiate toward one of the hematopoietic cell lineages.

Delta is a 43 kDa protein which belongs to the epidermal growth factor-like superfamily. Delta was cloned by another group from a mouse stromal cell line PA–6, a cell line which has been reported to support the growth of hematopoietic stem cells. Delta may function as a ligand by binding to the extracellular domain of a Drosophila protein called Notch. Notch encodes a transmembrane protein with a large extracellular domain, is widely expressed including by hematopoietic cells, and its activation may keep cells in an uncommitted state.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 247; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by NIH on or before September 19, 1995 will be considered. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 11, 1995.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 95–17983 Filed 7–20–95; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

Agency Forms Undergoing Paperwork Reduction Act Review

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call

the PHS Reports Clearance Office on (202) 690–7100.

The following requests have been submitted for review since the list was last published on July 7.

1. Requirements for Notice of Change in Status or Use of Titles VII and VIII Facilities—0915–0106—Extension, no change—A health professions or nurse training facility assisted under Title VII or Title VIII of the PHS Act is required to file a Notice with the Department when the facility undergoes a change in status or use, so that the Secretary can calculate the recovery amount. Respondents: Business or other for-profit; Not-for-profit institutions; Number of Respondents: 2; Number of Responses per Respondent: 1; Average Burden per Response: 10 hours; Estimated Annual burden: 20 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

2. Antiarrhythmics Versus Implantable Defibrillators (AVID) Spouse/Partner Quality of Life Study—New—The AVID study includes patients with serious arrhythmics who are randomly assigned to antiarrhythmic drugs or implantable defibrillator. A self-administered questionnaire will be obtained from a spouse/partner to provide a comprehensive assessment of his/her quality of life. It is essential to understand the impact of the illness and treatment on the patient's spouse/partner in order to evaluate the treatment protocol. Respondents: Individuals or households; Number of Respondents: 700; Number of Responses per Respondent: 2.3; Average Burden per Response: 1 hour; Estimated Annual burden: 1610 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

3. Responsibilities of Applicants for Promoting Objectivity in Research for Which Public Health Service (PHS) Funding is Sought: 42 CFR Part 50; 45 CFR Part 94—0925–0417—Revision—The purpose of the regulations is to protect the objectivity with which PHS-funded research is conducted. The regulations require disclosure of financial interests related to PHS-funded research by personnel who have decision-making responsibilities that could affect the outcome of the research. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

	No. of respondents	No. of responses/respondent	Average burden/response (hour(s))
Reporting: 42 CFR 50.604(g)/45 CFR 94.4(g)(2), (Initial Reports)	200	1	80
42 CFR 50.604(g)(2)/45 CFR 94.4(g)(2), (Subsequent Reports)	30	1	2
42 CFR 50.606(a)/45 CFR 94.6(a)	5	1	10
Recordkeepings: 42 CFR 50.604(e)/45 CFR 94.4(e)	2,000	10	4
Disclosures: 42 CFR 50.64(a)/45 CFR 94.4(a)	2,000	1	20
42 CFR 50.604(c)/45 CFR 94.4(c)	35,000	1	1

Estimated Annual Burden: 171,110 hours.

4. Contents of a Request for Health Hazard Evaluation—42 CFR 85.3–1—0920–0102—Extension, no change—The Health Hazard Evaluation (HHE) Program was designed to assist the National Institute for Occupational Safety & Health (NIOSH) in recommending new standards for workers exposed to harmful physical agents or toxic substances, to assess the validity of existing standards, and to provide individual workplaces with a resource for determining if toxic substances or harmful physical agents are present in their environment and, if they are present, whether they represent a potential health hazard. Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Number of Respondents: 500; Number of Responses per Respondent: 1; Average Burden per Response: 0.2 hour; Estimated Annual burden: 100 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: July 18, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–17982 Filed 7–20–95; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. FR–3843–N–03]

Announcement of Funding Awards for Fiscal Year 1995 Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 1995 Community Development Work Study Program (CDWSP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to attract economically disadvantaged and minority students to careers in community and economic development, community planning and community management, and to provide a cadre of well-qualified professionals to plan, implement, and administer local community development programs.

SOURCES OF FURTHER INFORMATION: Prospective students interested in participating in the CDWSP should contact directly the grantees listed below representing the colleges or universities that they would be interested in attending; HUD does not directly accept student applications or accept students into the program. Universities, Colleges, States and areawide planning organizations interested in receiving a grant application kit (which contains detailed information about the CDWSP) or a brief written program summary should contact HUD USER, P.O. Box 6091,

Rockville, MD 20849, (800) 245–2691, and should specifically reference the Community Development Work Study Program. Persons having technical questions about the program should contact John J. Hartung, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8130, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1537, extension 261. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on (800) 877–8399, or 202–708–9300. (Telephone numbers, other than the two ''800'' numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The CDWSP is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. The Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education and creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The CDWSP was enacted in the Housing and Community Development Act of 1988. (Earlier versions of the program were funded by the Community Development Block Grant Technical Assistance Program from 1982 through 1987 and the Comprehensive Planning Assistance Program from 1969 through 1981.) Eligible applicants include institutions of higher education having qualifying academic degrees, and States and areawide planning organizations who apply on behalf of such institutions. The CDWSP provides funds for tuition support (up to $3,000 per year for an undergraduate student and $3,500 per year for a graduate student), a work stipend (up to $6,000 per year for an undergraduate and $9,000 for a graduate student, for internship-type work in community development and related fields), additional support (for books and travel related to the academic program, up to $1,000 per year for an undergraduate student and $1,500 per year for a graduate student), and an administrative allowance (to grantees to offset some of the administrative costs of the program, fixed at $1,000 per year for each participating student). Each participating institution is funded for a minimum of three students and a maximum of ten students under the CDWSP.

On January 20, 1995, HUD published a Notice of Funding Availability announcing the availability of $3 million in FY 1995 funds for the CDWSP (60 FR 4338). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 1995 Community Development Work Study Program Funding Competition, by Name, Address, Phone Number, Grant Amount and Number of Students Funded

New England

1. New Hampshire College, Professor Christina Clamp, New Hampshire College Community Economic Development Program, 2500 N. River Road, Manchester, NH 03106, (603) 644–3103. Grant: $120,000, for four students.

New York/New Jersey

2. New School for Social Research, Professor Susan C. Morris, New School for Social Research, Graduate School of Management and Urban Policy, 66 Fifth Avenue, Seventh Floor, New York, NY 10011, (212) 229–5388. Grant: $110,400, for four students.

3. Pratt Institute, Professor Ron Shiffman, Pratt Graduate Center for Planning and the Environment, 379 DeKalb Avenue, Brooklyn, NY 11205, (718) 636–3486. Grant: $90,000, for three students.

4. Rutgers University, Professor Hooshang Amirahmadi, Rutgers University Department of Urban Planning and Policy Development, New Brunswick, NJ 08903, (908) 932–3532. Grant: $120,000, for four students.

5. State University of New York at Buffalo, Professor Henry Louis Taylor, SUNY Center for Applied Public Affairs Studies, 101C Fargo, Building 1, Ellicott Complex, Buffalo, NY 14261–0014, (716) 645–2374. Grant: $120,000, for four students.

Mid-Atlantic

6. Carnegie Mellon University, Professor Mark G. Wessel, Carnegie Mellon University School of Public Policy and Management, Pittsburgh, Pennsylvania 15213, (412) 268–3841. Grant: $120,000, for four students.

Southeast

7. University of Alabama at Birmingham, Professor Reata Busby, University of Alabama Center for Urban Affairs, 901 15th Street South, Birmingham, AL 35294, (205) 934–2500. Grant: $88,137, for three students.

8. Clemson University, Professor M. Grant Cunningham, Clemson University College of Architecture, Department of Planning and Landscape Architecture, 121 Lee Hall, P.O. Box 340511, Clemson, South Carolina 29634, (803) 656–3926. Grant: $79,588, for four students.

9. Eastern Kentucky University, Professor Terry Busson, Eastern Kentucky University Department of Government, McCreary 113, Richmond, KY 40475, (606) 622–1019. Grant: $111,288, for four students.

10. Florida State University, Professor Charles Connerly, Florida State University Department of Urban and Regional Planning, Tallahassee, FL 32306, (904) 644–8516. Grant: $86,120, for three students.

11. Georgia Southern University, Professor Charles W. Gossett, Georgia Southern University Department of Public Administration, Landrum Box 8101, Statesboro, Georgia 30460, (912) 681–0417. Grant: $112,800, for four students.

12. Jackson State University, Professor Curtina Moreland Young, Jackson State University Department of Public Policy and Administration, 3825 Ridgewood Road, Box 18, Jackson, MS 39211, (601) 982–6277. Grant: $83,280, for three students.

13. Triangle J Council of Governments, Mr. John Hodges-Copple, P.O. Box 12276, Research Triangle Park, NC 27709, (919) 549–0551. Grant: $227,578, for four students each at the University of North Carolina-Chapel Hill and North Carolina State University.

Midwest

14. University of Cincinnati, Professor Samuel V. Noe, University of Cincinnati School of Planning, One Edwards Center, Room 548, P.O. Box 210073, Cincinnati, OH 45221, (515) 556–0205. Grant: $69,000, for three students.

15. Cleveland State University, Professor Mittie Olion Chandler, Cleveland State University College of Urban Affairs, Department of Urban Affairs, 1737 Euclid Avenue, Cleveland OH 44115, (216) 687–2136. Grant: $120,000, for four students.

16. University of Illinois at Chicago, Professor Raffaella Y. Nanetti, University of Illinois at Chicago Urban Planning and Policy Program, 1007 W.

Harrison Street, Room 1180, Chicago, IL 60607, (312) 996–2125. Grant: $116,640, for four students.

17. Indiana University at South Bend, Professor William P. Hojnacki, Indiana University School of Public and Environmental Affairs, 1700 Mishawaka Avenue, P.O. Box 7111, South Bend, IN 46634, (219) 237–4131. Grant: $99,804, for four students.

18. Mankato State University, Professor Robert A. Barrett, Mankato State University Urban and Regional Studies Institute, P.O. Box 8400, Mankato, MN 56002, (507) 389–1714. Grant: $111,600, for four students.

19. Michigan State University, Professor Roger Hamlin, Michigan State University Urban and Regional Planning Program, 201 Urban Planning and Landscape Architecture Building, East Lansing, MI 48224, (517) 353–9054. Grant: $116,756, for four students.

20. University of Wisconsin at Green Bay, Professor Ray Hutchison, University of Wisconsin Department of Urban and Regional Studies, Green Bay, WI 54311, (414) 465–2337. Grant: $87,888, for four students.

Southwest

21. Alamo Area Council of Governments, Mr. Jerry Smith, World Trade Center Building, 118 Broadway, Suite 400, San Antonio, TX 78205, (210) 225–5201. Grant: 240,000 for four students each at St. Mary's University and Trinity University.

22. University of New Mexico, Professor James R. Richardson, University of New Mexico School of Architecture and Planning, 2414 Central Avenue, SE, Albuquerque, NM 87131, (505) 277–6460. Grant: $109,812, for four students.

23. North Central Texas Council of Governments, Mr. R. Michael Eastland, P.O. Box 5888, Arlington, TX 76005, (817) 695–9101. Grant: $209,797, for three students each at the University of North Texas, the University of Texas-Arlington, and the University of Texas-Dallas.

Great Plains

24. University of Nebraska at Omaha, Professor Burton J. Reed, University of Nebraska at Omaha College of Public Affairs and Community Service, Department of Public Administration, 60th and Dodge Streets, Omaha, NE 68182, (402) 554–2625. Grant: $79,380, for four students.

Northwest/Alaska

25. Eastern Washington University, Professor Susan Bradbury, Eastern Washington University Department of Urban and Regional Planning, Mail Stop 50, 526 5th Street, Cheney, WA 99004, (509) 359–2288. Grant: $88,800, for four students.

26. University of Washington, Professor Dennis M. Ryan, University of Washington Department of Urban Design and Planning, 410 Gould Hall, JO–40, Seattle, WA 98195, (206) 543–4190. Grant: 120,000, for four students.

Dated: July 14, 1995.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 95–18051 Filed 7–20–95; 8:45 am]

BILLING CODE 4210–62–P

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–46]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David Pollack, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–5652 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address

(including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ed Guilford, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501–2059; Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE–MC, Room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314–1000; (202) 761–1753; (These are not toll-free numbers).

Dated: July 17, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM; FEDERAL REGISTER REPORT FOR 07/21/95

Suitable/Available Properties

Buildings (by State)

Ohio

Zanesville Federal Building
65 North Fifth Street
Zanesville Co: Muskingum OH
Landholding Agency: GSA
Property Number: 549520018
Status: Excess
Comment: 18,750 sq. ft., most recent use—office, possible asbestos, eligible for listing on the Natl. Register of Historic Places.
GSA Number: 2–G–OH–781A

Tennessee

Cheatham Lock & Dam
Tract D, Lock Road
Nashville Co: Davidson TN 37207–
Landholding Agency: COE
Property Number: 319520003
Status: Unutilized
Comment: 1,100 sq. ft. dwelling w/storage bldgs on 7 acres, needs major rehab, contamination issues, approx. 1 acre in fldwy, modif. to struct. subj. to approval of St. Hist. Presv. Ofc.

Wyoming

Ranger Dwelling #1
205 Spring Street
Cokeville Co: Lincoln WY 83114–
Landholding Agency: GSA
Property Number: 549520015
Status: Excess
Comment: 1,625 sq. ft., brick residence
GSA Number: 7–A–WY–535

Old Kelley House
Ranger Dwelling #2, 410 Pine Street
Cokeville Co: Lincoln WY 83114–
Landholding Agency: GSA
Property Number: 549520016
Status: Excess
Comment: 2,480 sq. ft., log and wood frame home, needs rehab
GSA Number: 7–A–WY–535–A

Land (by State)

Nebraska

Farm Site
Mead Co: Saunders NE 68041–
Location: ⅛ mi north of the intersection of US Hwy 77 & St Hwy 92
Landholding Agency: GSA
Property Number: 549520017
Status: Excess
Comment: 11.35 acres, periodic flooding, sewage disposal, ''limited access highway''
GSA Number: 7–C–NE–518

Suitable/To Be Excessed

Buildings (by State)

West Virginia

R.T. Price House
U.S. Route 2
Williamson Co: Mingo WV 25661–
Landholding Agency: COE
Property Number: 319520004
Status: Excess
Comment: 3,116 sq. ft., brick, most recent use—office/conf., listed on Natl. Reg. of Historic Places, restriction against human habitation, recommend flood protection measures.

[FR Doc. 95–17945 Filed 7–20–95; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–59733]

Intent to Prepare a Planning Amendment to the Lahontan Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a plan amendment and invitation for public participation.

SUMMARY: The following described public land in Washoe County, Nevada will be examined for possible transfer to Washoe County under the authority of the Recreation and Public Purposes Act of 1926, as amended (43 U.S.C. 869 *et seq.*) for uses related to bomb disposal and training facilities:

Mount Diablo Meridian

T. 23 N., R. 21 E.,
Sec. 8, SW¼SW¼,
Sec. 17, W½NW¼

This public land is within an area currently identified in the Lahontan Resource Management Plan (RMP) for retention in federal ownership for multiple uses. The Bureau of Land Management will consider amending the RMP to change the land designation of up to 120 acres, from retention status to transfer status.

DATES AND ADDRESSES: By no later than August 21, 1995, interested persons may submit comments regarding the proposed plan amendment to the District Manager, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706.

SUPPLEMENTARY INFORMATION: The public land is located approximately 20 miles north of the Reno/Sparks, Nevada area, just west of State Highway 445 (Pyramid Highway). The following resources would be considered in preparation of the amendment: lands, recreation, wildlife, range, minerals, cultural resources, watershed, soils, threatened and endangered species, and hazardous materials. Staff members representing each resource will be consulted during preparation of the environmental document. The public is invited to participate in the identification of issues related to the proposed transfer of the subject land to Washoe County for development and operation of a bomb disposal and training facility. Anticipated issues include:

(1) Transfer of public land out of Federal ownership

(2) Change in character and use of land from undeveloped open space utilized mainly for dispersed recreation activities and livestock grazing to a restricted-access county facility

(3) Potential impacts to recreationist and livestock grazing

(4) Potential impacts to adjacent landowners

(5) Proximity to Incandescent Rocks Area of Critical Environmental Concern

Planning documents and other pertinent materials may be examined at the Carson City District Office between 7:30 a.m. and 5 p.m. Monday through Friday.

Dated this 7th day of July, 1995.

John O. Singlaub,

District Manager.

[FR Doc. 95–17953 Filed 7–20–95; 8:45 am]

BILLING CODE 4310–HC–P

[CO–034–95–1430–00]

San Juan-San Miguel Resource Management Plan Amendment

AGENCY: Bureau of Land Management, Uncompahgre Basin Resource Area, Montrose District, Montrose, Colorado.

ACTION: Notice; Intent to amend the San Juan-San Miguel Resource Management Plan and invite public participation in developing a Multi-Objective Plan for the San Miguel River Basin.

SUMMARY: This document provides notice of the Bureau of Land Management's intent to amend its San

Juan-San Miguel Resource Management Plan governing the management of public land within portions of the BLM's Uncompahgre Basin Resource Area in southwest Colorado. Notice is also given of a series of public meetings which will be held to discuss issues to be addressed in a Multi-Objective Plan for the San Miguel River Basin. Proposed planning criteria and anticipated planning issues are also included herein.

ADDRESSES: For further information contact Karen Tucker, Bureau of Land Management, Uncompahgre Basin Resource Area, 2505 South Townsend Ave., Montrose, CO 81401; Telephone (970) 249–6047; Fax. (970) 249–8484.

To have your name added to the Multi-Objective Plan mailing list, please contact Linda Luther at the Telluride Institute, P. O. Box 1770, Telluride, Colorado 81435; Telephone (970) 728–4402; Fax (970) 728–4638.

SUPPLEMENTARY INFORMATION: The Multi-Objective Planning process is a basin-wide, ecosystem-based effort which has been undertaken by the San Miguel River Coalition, an organization of over 50 partners representing local, county, state, federal government and land managing agencies; commodity, interest, and environmental groups; commercial and private recreation users; and a diverse group of interested and affected individuals. The goal of this public planning effort is to develop an ecosystem-based plan which provides direction for the cooperative management, protection, and responsible use of the outstanding scenic, riparian, geologic, wildlife, historic, recreation, and other natural resources of the San Miguel River Basin.

The planning area includes the entire San Miguel River watershed from its headwaters above the Town of Telluride to its confluence with the Dolores River near Uravan, Colorado. The watershed encompasses approximately 997,000 acres, including Forest Service, Bureau of Land Management, State of Colorado, and private lands within Montrose and San Miguel Counties and the Towns of Telluride, Placerville, Sawpit, Norwood, Naturita, Nucla, and Uravan.

Included within the planning area is the BLM San Miguel River Area of Critical Environmental Concern (ACEC) and Special Recreation Management Area (SRMA) which consists of approximately 33,000 acres of public land along 38 miles of the San Miguel River corridor from Deep Creek to Piñon. BLM's management goals for these areas are to protect the ACEC's unique, high quality riparian vegetative communities, as well as the area's significant geologic, cultural, wildlife, and scenic resources while providing a wide range of outdoor recreational opportunities.

Public meetings of the Multi-Objective Planning coalition will be held every two months for an approximate eighteen month period beginning with an August 7 meeting in Norwood, Colorado. The all-day meeting at the Norwood Schools All Purpose Room will be a workshop forum from 9:00 a.m. to 4:30 p.m., followed by a community open house from 5:30 to 8:00 p.m. Meeting locations will be rotated between the towns of Telluride, Naturita, Nucla, Norwood and Montrose in order to ensure local community participation and input. Written comments will also be accepted throughout the planning process at the addresses shown above.

Documents pertinent to this proposal may be examined at the BLM office in Montrose, Colorado. Some of the issues that have been identified in the intial phases of the Multi-Objective Plan process include: Water rights, water quantity and quality, growth and development, lifestyles and community preservation, and commodity and resource issues. Additional environmental issues include landscape health, riparian and aquatic habitat protection, wildlife habitat quality and fragmentation, declining biodiversity, reintroduction of native species, and noxious weed control. Other factors to be considered include recreation and resource use vs. riparian and scenic values, the level and intensity of recreation management, including possible allocation of commercial river and upland use, grazing of livestock, management of the mineral estate, transportation and utility corridors, off highway vehicle designations, and forest product disposal.

The following disciplines will be represented on the BLM planning team: recreation, wildlife, fisheries, and range management, forestry, geology, realty, soils, and hydrology. Planning criteria include: policy, legal, and regulatory constraints, as well as, requirements to maintain riparian vegetation quality, maintain scenic values, maintain recreational values and meet recreation demands, determine the level of management intensity required, determine the need for land or easement acquisition, and set management objectives to protect the priority resources within the proposed ACEC.

Dated: July 17, 1995.

Mark W. Stiles,

District Manager.

[FR Doc. 95–18028 Filed 7–20–95; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Availability of the Record of Decision (ROD) Document on the Issuance of an Incidental Take Permit To Allow Incidental Take of the Threatened Desert Tortoise by Clark County, Nevada

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a decision has been made to issue an incidental take permit to allow incidental take of the threatened desert tortoise (*Gopherus agassizii*) in Clark County, Nevada and that the Record of Decision is available.

FOR FURTHER INFORMATION CONTACT: Dolores Savignano, U.S. Fish and Wildlife Service, 1500 North Decatur Boulevard, #01, Las Vegas, Nevada 89108 or Carlos Mendoza, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Room 125, Reno, Nevada 89502.

Individuals wishing copies of this ROD should contact the U.S. Fish and Wildlife Service (Service) offices listed above. Copies of the ROD have been sent to all agencies and individuals who previously received copies of the Draft and Final Environmental Impact Statements (EIS) and to all others who have already requested copies.

DECISION: The Service's decision is to issue an incidental take permit, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), for incidental take of desert tortoises to the County of Clark, the cities of Las Vegas, North Las Vegas, Henderson, Mesquite, and Boulder City, and Nevada Department of Transportation resulting in implementation of the Preferred Alternative, the Clark County Desert Conservation Plan (CCDCP), as it is described in the Final EIS for Issuance of a Permit to Allow Incidental Take of Desert Tortoises by Clark County, Nevada. This decision is based on a thorough review of the alternatives and their environmental consequences.

RATIONALE FOR DECISION: Implementation of the CCDCP has been selected as the Preferred Alternative based on consideration of a number of environmental and social factors. These factors include: (1) Proposed mitigation in the CCDCP will benefit desert tortoise

recovery by implementing actions recommended in the Desert Tortoise (Mojave Population) Recovery Plan (Recovery Plan); (2) the majority of incidental take will occur within the Las Vegas Valley, where a viable population of desert tortoises cannot be maintained over the long term; and (3) the proposed permit would allow incidental take of desert tortoise in areas not proposed for recovery and would provide the opportunity for more orderly development within the Las Vegas Valley by removing the constraint of having to avoid the patchy distribution of desert tortoise habitat.

Clark County, the cities of Las Vegas, North Las Vegas, Henderson, Mesquite, and Boulder City, and the Nevada Department of Transportation (NDOT) (Applicants) propose to collect funds through imposition of a $550-per-acre fee for disturbance of non-Federal lands throughout Clark County and areas disturbed as a result of NDOT activities in desert tortoise habitat. Subsequently, the Applicants propose to expend $1.35 million per year, and up to $1.65 million per year for the first 10 years, to minimize and mitigate the potential loss of desert tortoise habitat. It is anticipated that the majority of these funds will be used to implement mitigation measures as described in the CCDCP. In addition, funds will be provided to State and Federal resource managers for implementing desert tortoise recovery measures recommended in the Recovery Plan, and for planning and managing lands both within and outside of desert wildlife management areas. The desert tortoise is only part of the desert ecosystem, and unless the various species of plants and animals which co-inhabit that system are likewise preserved, the status of the desert tortoise is likely to decline. Therefore, the needs of other plant and wildlife resources will be addressed, possibly avoiding the need to list these species as threatened or endangered under the Act in the future. The Applicants also propose to purchase a conservation easement of more than 85,000 acres of non-Federal land in Clark County that preserves, protects, and assures the management and study of the conservation values, and in particular the habitat of the desert tortoise.

To minimize the impacts of take, the Applicants propose to provide a free pick-up and collection service for desert tortoises encountered in harm's way within Clark County. These desert tortoises will be made available for beneficial uses such as translocation studies and programs, research, education, zoos, museums, or other programs approved by the Service and Nevada Division of Wildlife. Sick or seriously injured desert tortoises will be humanely euthanized. NDOT will incorporate specific measures into its operations to avoid or minimize impacts to desert tortoises. Clark County will also implement a public information and education program intended to benefit the desert tortoise and the desert ecosystem.

The underlying purpose or goal of the proposed action is to support a program designed to ensure the continued existence of the species, while resolving potential conflicts that may arise from otherwise lawful private and public improvement projects.

SUPPLEMENTARY INFORMATION:

A. Background

On April 2, 1990, the Service issued a final rule (55 FR 12178) that determined the desert tortoise to be a threatened species under the Act. This regulation became effective on the date of its publication in the **Federal Register**. Because of its listing as a threatened species, the desert tortoise is protected by the Act's prohibition against ''taking.'' The Act defines ''take'' to mean: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. ''Harm'' is further defined by regulation as any act that kills or injures wildlife, including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

The Service, however, may issue permits to carry out otherwise lawful activities involving take of endangered and threatened wildlife under certain circumstances. Regulations governing permits are in 50 CFR 17.22, 17.23, and 17.32. For threatened species, such permits are available for scientific purposes, enhancing the propagation or survival of the species, economic hardship, zoological exhibition or educational purposes, incidental taking, or special purposes consistent with the purposes of the Act.

On July 24, 1991, the Service issued a permit under authority of section 10(a)(1)(B) of the Act (PRT–756260) to Clark County and the cities of Las Vegas, North Las Vegas, Henderson, and Boulder City, for the incidental take of 3,710 desert tortoises on up to 22,352 acres of habitat within the Las Vegas Valley and Boulder City in Clark County, Nevada. The permit application was accompanied by the Short-Term Habitat Conservation Plan for the Desert Tortoise in the Las Vegas Valley, Clark County, Nevada, and an implementation agreement that identified specific measures to minimize and mitigate the effects of the action on desert tortoises. The primary purpose of this permit was to allow time to complete a long-term plan.

On August 1, 1994, the Service amended the incidental take permit and extended the expiration date by one year (to July 31, 1995). The amendment authorized the disturbance of 8,000 additional acres of desert tortoise habitat within the existing permit area, but did not authorize an increase in the number of desert tortoises allowed to be taken under the existing permit. Additional measures to minimize and mitigate the effects of the amendment were also identified.

Upon completion of the CCDCP (long-term plan), the Applicants submitted an application to the Service for a permit to incidentally take desert tortoises, pursuant to section 10(a)(1)(B) of the Act, in association with various proposed public and private projects in Clark County, Nevada. The proposed permit would allow incidental take of desert tortoises for a period of 30 years, resulting from development on up to 113,900 acres of non-Federal lands within Clark County, Nevada. The permit application was received September 28, 1994, and was accompanied by the CCDCP, which serves as the Applicant's habitat conservation plan and details their proposed measures to minimize, monitor, and mitigate the impacts of the proposed take on the desert tortoise.

B. Key Issues

Through public scoping and with input from various agencies and individuals, key issues were identified. Potential consequences, in terms of adverse impacts and benefits associated with the implementation of each alternative selected for detailed analysis, were described and thoroughly examined in the Draft and Final EIS. The Service received 13 letters of comment on the Draft EIS which focused on the following subject areas.

—Survey and removal of desert tortoises
—Translocation of tortoises to a sanctuary
—Euthanasia of tortoises
—Measurable criteria for short-term and long-term conservation goals
—Tortoise adoption
—Effects to other species and resources
—Financing to implement the CCDCP

Appendix A of the Final EIS contains copies of all comments received and responses to all comments received. The

Final EIS was revised, where appropriate, based on public comment and review. Issues and potential consequences have remained identical from the draft to the final EIS.

C. Alternatives

Of the eight alternatives considered, two alternatives were evaluated in detail. Issuance of the permit with the mitigating, minimizing, and monitoring measures outlined in the CCDCP is the Service's preferred alternative and is discussed above. The Final EIS outlined alternative measures that were considered, but not in detail, by the Service. The other alternative selected for detailed evaluation was a No Action alternative. The No Action alternative would benefit individual desert tortoises on non-Federal lands in the short-term, however, it has been determined that viable populations of desert tortoises will not persist in the urban areas over the long-term. The No Action alternative would, therefore, not provide the benefits of the long-term recovery efforts for the desert tortoise identified in the CCDCP. The No Action alternative was not identified as the preferred alternative because it would diffuse existing regional conservation planning efforts for the desert tortoise and possibly concentrate activity on individual project needs, not meet the purpose and needs of the Applicants, and not provide the long-term benefits to the desert tortoise. Additionally, the No Action alternative could result in adverse impacts to the social environment within Clark County due to constraints on land-use activities that would impact the desert tortoise.

Dated: July 11, 1995.

Thomas Dwyer,

Deputy Regional Director.

[FR Doc. 95–18027 Filed 7–20–95; 8:45 am]

BILLING CODE 4310–55–P

Notice of Availability; Draft Environmental Impact Statement (EIS) on the Proposed Acquisition of Water Rights for Lahontan Valley Wetlands, Churchill County, Nevada

AGENCIES: U.S. Fish and Wildlife Service (lead agency); Nevada Division of Wildlife, U.S. Bureau of Reclamation, U.S. Bureau of Indian Affairs, U.S. Bureau of Land Management, U.S. Natural Resources Conservation Service, Naval Air Station—Fallon, Fallon Paiute-Shoshone Tribes, and Churchill County (cooperating agencies).

ACTION: Notice of availability and public meetings.

SUMMARY: This notice advises the public that the draft Environmental Impact Statement (EIS) for water rights acquisition for the Lahontan Valley Wetlands, Churchill County, Nevada, is available for public review. five alternatives are being considered, including the Proposed Action. Comments and suggestions are requested. This notice is being furnished pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: Written comments are requested by September 20, 1995. An open-house workshop will be held on August 9, 1995, between 3 pm and 8 pm, at the Fallon Community Center. Fish and Wildlife Service representatives will be available to answer questions and explain the draft EIS at the workshop. Public hearings will be held on September 6, 1995 at 3 pm and at 7 pm to receive written and oral comments concerning the draft EIS.

ADDRESSES: Written comments should be addressed to: Project Leader, Stillwater National Wildlife Refuge, P.O. Box 1236, Fallon, NV 89407.

Copies of the draft EIS may be inspected at the following locations:

Stillwater National Wildlife Refuge, 1000 Auction Road, Fallon, NV 89406

U.S. Fish and Wildlife Service, Refuge and Wildlife, 911 N.E. 11th Avenue, Portland, OR 97232

Churchill County Public Library, 553 South Maine St., Fallon, NV 89406

Nevada State Library and Archives, Reference Desk, 100 Stewart Street, Carson City, NV 89701

Reno Branch, Washoe County Public Library, 301 S. Center Street, Reno, NV 89501

FOR FURTHER INFORMATION CONTACT: Ron Anglin, Project Leader, or Gary Shellhorn, Stillwater National Wildlife Refuge, P.O. Box 1236, Fallon, NV 89407, (702) 423–5128.

Individuals desiring a copy of the draft EIS for review should immediately contact the above address. Copies have been sent to agencies and individuals who participated in the scoping process and to those people that later requested to be added to the mailing list.

SUPPLEMENTARY INFORMATION: The Truckee-Carson-Pyramid Lake Water Rights Settlement Act, (Title II of Public Law 101–618), directs the Secretary of the Interior to acquire enough water and water rights to sustain, on a long-term average, approximately 25,000 acres of primary wetland habitat in the Lahontan Valley. As defined in Public Law 101–618, primary wetland habitat is wetland habitat is wetland lying within Stillwater National Wildlife Refuge, Stillwater Wildlife Management Area, Carson Lake and Pasture, and Fallon Paiute-Shoshone Indian Reservation wetlands. The Service developed and analyzed four alternatives, including the Proposed Action, for securing up to 125,000 acre-feet (AF) of water for Lahontan Valley wetlands. A No Action Alternative was also developed and analyzed. The purpose of the Draft EIS is to analyze the potential consequences of the five alternatives being considered.

The five alternatives are: (1) No Action, which entails the acquisition of 20,000 AF of water rights from within the Carson Division of the Newlands Irrigation Project (Newlands Project); (2) Proposed Action, which proposes the acquisition of an additional 102,000 AF of water rights for a total of up to 122,000 AF of water rights; (3) Least Cost Alternative, which would result in the acquisition of up to 100,000 AF of water rights (including the initial 20,000 AF of acquisition); (4) Maximum Acquisition Alternative, which would result in up to 133,500 AF being acquired (which includes the initial 20,000 AF of acquisition); and (5) Minimum Acquisition Alternative, which would cap or limit Carson Division Newlands Project purchase acquisitions at 75,000 AF of water rights and would utilize a variety of other sources of water to meet the Fish and Wildlife Service's primary wetland habitat objective.

Under the Proposed Action, the Service proposes to acquire sufficient water and water rights to provide a total annual average of 125,000 AF of inflow to primary wetland areas to achieve the objective of sustaining 25,000 acres of primary wetland habitat in the Lahontan Valley. The amount acquired by the Service would supplement available drainwater, spills, water being acquired by the Service under earlier authorizations, and would incorporate water being acquired by the State of Nevada for Lahontan Valley wetland areas.

To meet the needed 125,000 AF of annual average wetland inflow, the Service would, under the Proposed Action, acquire up to 122,000 AF of water rights, which amounts to about 66 percent of the water rights that are in currently in private ownership in the Carson Division of the Newlands Project. In addition, approximately 13,000 AF of drainwater and 11,000 AF of spills would supplement inflows to the primary wetland habitats.

Puchase of water rights would be from willing sellers only. In addition, leasing, donations, and exchange of water rights would be utilized as opportunities arise.

The draft EIS evaluates the Proposed Action and other alternatives relative to their potential effects on: (1) Newlands Project operations and infrastructure; (2) water resources; (3) biological resources; (4) regional agriculture, farmlands, and the local economy; (5) regional recreation; (6) land use; and (7) social values. Estimated acquisition costs are also disclosed.

Dated: July 11, 1995.

Thomas Dwyer,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 95–17548 Filed 7–20–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to extend the term of Concession Contract CC–CACO001–82 with the Town of Truro, authorizing continued operation of the Highland Golf Links facilities and services for the public at Cape Cod National Seashore, for a period of six (6) months from July 1, 1996, through December 31, 1996.

The National Park Service is in the process of revising the General Management Plan and preparing a Development Concept Plan. This extension will allow sufficient time to complete the planning for the Highland Golf Links. Upon completion, the National Park Service will develop a prospectus for a new contract.

No prospectus is available at this time. Further public notice will be given when a prospectus is to be issued.

DATES: Comments must be submitted on or before the sixtieth day following publication of this notice to the National Park Service, Northeast Field Area, New England System Support Office, Attention: Concessions Management Division, 15 State Street, Boston, Massachusetts 02109–3572.

FOR FURTHER INFORMATION CONTACT: Lynne Koser at the above address; telephone (617) 223–5209.

Dated: July 12, 1995.

Robert W. McIntosh,

Acting Deputy Field Director.

[FR Doc. 95–18022 Filed 7–20–95; 8:45 am]

BILLING CODE 4310–70–M

Notice of the Intention To Extend an Existing Concession Contract—Scotty's Castle, Death Valley National Park

SUMMARY: Notice of given that the National Park Service intends to extend the concession contract at Scotty's Castle, Death Valley National Park for a period as long as three years so that necessary planning can be completed.

SUPPLEMENTARY INFORMATION: The concession contract at Scotty's Castle will expire on December 31, 1995, unless extended. The National Park Service will not renew this contract for an extended period until sufficient planning can be conducted to determine the future direction for concession services at the Scotty's Castle site. The necessary planning may affect the future of the concession. The planning process may take as long as two to three years to complete. Until that planning is completed, it will not be in the best interest of Death Valley National Park to enter into a long term concession contract for services at the Scotty's Castle site. For these reasons, it is the intention of the National Park Service to extend the current contract for a period of up to three years beginning January 1, 1996. The extension will be effective for a lesser period should planning issues be resolved and a renewal process be conducted and result in a selection. Benefits accruing to the Government under the current contract are currently under renegotiation.

Information about this notice can be sought from: Administrative Officer, Death Valley National Park, Attn: Ms. Marian O'Dea, Death Valley National Park, Death Valley, CA 92328, or call: (619) 786–2331.

Dated: July 11, 1995.

Stanley T. Albright,

Regional Director, Western Region.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32631]

Alan W. Maples—Control Exemption—Hollidaysburg and Roaring Spring Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 11343–45 the control by petitioner, Alan W. Maples, of Hollidaysburg and Roaring Spring Railroad Company (HRS), a new class III carrier. HRS became a carrier through its acquisition from Consolidated Rail Corporation of approximately 10.2 miles of rail line between Hollidaysburg and Roaring Spring, PA in *Hollidaysburg and Roaring Spring Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation,* Finance Docket No. 32633 (ICC served Apr. 11, 1995). Petitioner currently controls the Everett Railroad Company, a class III rail carrier that connects with HRS. To avoid unlawful control by petitioner, HRS is being held in an independent voting trust pending Commission approval of this control transaction. The exemption is subject to standard labor protective conditions.

DATES: This exemption will be effective on August 20, 1995. Petitions for stay must be filed by August 7, 1995. Petitions to reopen must be filed by August 15, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32631 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Robert A. Wimbish, Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the 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, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: July 6, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–17991 Filed 7–20–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32692]

Southwest Pennsylvania Railroad Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation

Southwest Pennsylvania Railroad Company (SWP), a noncarrier, has filed

a notice of exemption to acquire and operate approximately 28.35 miles of rail line known as the Greensburg Cluster owned by Consolidated Rail Corporation in Westmoreland and Fayette Counties, PA. The Greensburg Cluster consists of the following interconnected rail lines: (1) the Greensburg Industrial Track between milepost 0.05+/− and milepost 2.50+/−; (2) the Southwest Secondary Track between milepost 2.50+/− and milepost 17.54+/−, together with portions of the Sewickly Branch and the Tarr Branch; (3) the Southwest Branch/Southwest Secondary Track between milepost 17.54+/− and milepost 23.80+/−; (4) the Long Siding between milepost 0.1+/− and milepost 1.04+/−; (5) the Southwest (Radebaugh) Secondary Track and the Long Siding between milepost 1.04+/− and milepost 2.50+/−; and (6) the Yukon Industrial Track between milepost 0.00+/− and milepost 3.00+/−.[1] Consummation of the proposed transaction took place on June 28, 1995.

This transaction is related to a simultaneously filed notice of exemption in Finance Docket No. 32734, *Phillip C. Larson, Russell A. Peterson and Dennis E. Larson—Continuance in Control Exemption—Southwest Pennsylvania Railroad Company*, in which SWP's shareholders seek to continue in control of SWP and Camp Chase Industrial Railroad Corporation, a class III shortline railroad, when SWP becomes a carrier.[2]

Any comments must be filed with the Commission and served on: Keith G. O'Brien, 1920 N St., NW, Suite 420, Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–17992 Filed 7–20–95; 8:45 am]

BILLING CODE 7035–01–P

[1] These lines connect at Everson, PA, with a rail line that SWP seeks simultaneously to lease and operate from Westmoreland County Industrial Development Corporation and Fay-Penn Land Trust, both non-profit corporations, in Finance Docket No. 32737, *Southwest Pennsylvania Railroad Company—Lease and Operation Exemption—Lines of Westmoreland County Industrial Development Corporation and Fay-Penn Land Trust.*

[2] Notice of an acquisition and operation exemption was given by the Commission in *Camp Chase Industrial Railroad Corporation—Acquisition and Operation Exemption—Line of Consolidated Rail Corporation*, Finance Docket No. 32581 (ICC served Oct. 21, 1994).

[Finance Docket No. 32734]

Phillip C. Larson, Russell A. Peterson and Dennis E. Larson—Continuance in Control Exemption—Southwest Pennsylvania Railroad Company

Phillip C. Larson, Russell A. Peterson and Dennis E. Larson, noncarrier individuals, have filed a notice of exemption to continue in control of Southwest Pennsylvania Railroad Company (SWP), upon SWP becoming a class III rail carrier. SWP, a noncarrier, has concurrently filed notices of exemption in Finance Docket No. 32692, *Southwest Pennsylvania Railroad Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation* (in which SWP seeks to acquire and operate approximately 28.35 miles of rail line owned by Consolidated Rail Corporation in Westmoreland and Fayette Counties, PA), and in Finance Docket No. 32737, *Southwest Pennsylvania Railroad Company—Lease and Operation Exemption—Lines of Westmoreland County Industrial Development Corporation and Fay-Penn Land Trust* (in which SWP seeks to lease and operate approximately 9.56 miles of rail line owned by two non-profit corporations in those same two counties). The parties intended to consummate this transaction on or after June 28, 1995.

The above individuals control another nonconnecting class III rail carrier: Camp Chase Industrial Railroad Corporation (CCIR), operating in Ohio.[1] The shareholders' ownership interest in CCIR is 14 percent each for Phillip and Dennis Larson, and 72 percent for Russell Peterson. Each of the individuals also owns 33⅓ percent of the stock of SWP.

The parties state that: (1) The railroads will not connect with each other or with any railroads in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Keith G. O'Brien, 1920 N St., NW, Suite 420, Washington, DC 20036.

Decided: July 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–17993 Filed 7–20–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Notice of an acquisition and operation exemption was given by the Commission in *Camp Chase Industrial Railroad Corporation—Acquisition and Operation Exemption—Line of Consolidated Rail Corporation*, Finance Docket No. 32581 (ICC served Oct. 21, 1994).

[Finance Docket No. 27748 (Sub-No. 1)]

Chicago and North Western Railway Company and Wisconsin Central Limited—Joint Relocation Project Exemption—in Wood County, WI

On June 23, 1995, Chicago and North Western Railway Company (CNW) and Wisconsin Central Limited (WCL) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate lines of railroad. The proposed transaction was expected to be consummated on or after June 30, 1995.

The line relocation project will result in the rearrangement, consolidation and rationalization of CNW's trackage rights over WCL's lines between Wisconsin Rapids and Nekoosa, WI. CNW currently operates over two of WCL's tracks under separate trackage rights agreements. Under the first agreement (the Milwaukee Road Agreement), dated September 20, 1973, between CNW and the Chicago, Milwaukee, St. Paul and Pacific Company, CNW was granted overhead trackage rights over a line between Necedah and Wisconsin Rapids, WI, via Nekoosa, WI. CNW was also granted the right to use the line in an emergency to serve Port Edwards and Nekoosa, WI.

Under the second agreement (the Soo Agreement), dated April 17, 1973, between CNW and Soo Line Railroad Company (Soo), CNW was granted overhead trackage rights between Nekoosa and Wisconsin Rapids, WI.[1]

[1] The Milwaukee Road Agreement was assumed by Soo Line Railroad Company (Soo) in 1985. *See*

Continued

The trackage rights acquired under these agreements permitted CNW to use WCL's lines to access its yards and industries at both Nekoosa and Port Edwards, WI, from Wisconsin Rapids, WI.

Under the proposed relocation: (1) CNW's trackage rights operations in the Port Edwards and Nekoosa, WI area will be consolidated on the former Milwaukee Road track; (2) the emergency use restriction in the original Milwaukee Agreement will be deleted permitting CNW to serve Port Edwards and Nekoosa from the former Milwaukee trackage; (3) CNW will be granted additional trackage rights over short segments of WCL's track to reach its Nekoosa and Port Edwards Yards from the former Milwaukee Road track under the amended Milwaukee Agreement; and (4) the Soo Agreement will be canceled, and the trackage rights over the former Soo trackage rights not covered by the amended Milwaukee Agreement will be discontinued. CNW and WCL state that service to shippers will not be disrupted.

The Commission will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993). The Commission has determined that line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, any incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Janet H. Gilbert, Wisconsin Central Limited, P.O. Box 5062, Rosemont, IL 60017–5062, and Robert T. Opal, Chicago and North Western Railway Company, 165 North Canal Street, Chicago, IL 60606.

Decided: July 17, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–17990 Filed 7–20–95; 8:45 am]

BILLING CODE 7035–01–P

Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Reorganization—Acquisition by Grand Trunk Corporation, 2 I.C.C.2d 161 (1984). In 1987, WCL acquired certain assets of Soo, including the line between Necedah and Wisconsin Rapids, WI, and the Soo Agreement in *Wisconsin Central Ltd.—Exemption Acquisition and Operation —Certain Lines of Soo Line Railroad Company,* Finance Docket No. 31102 (ICC served July 28, 1988).

The trackage rights were acquired by CNW pursuant to approval granted in *Chicago and North Western Transportation Company—Trackage Rights Between Wisconsin Rapids and Necedah in Wood and Juneau Counties, WI,* Finance Docket No. 27748 (ICC served Nov. 3, 1975), *Chicago and North Western Transportation Company—Construction of a Line of Railroad at Necedah, Juneau County, WI,* Finance Docket No. 27749 (ICC served Nov. 3, 1975), and *Chicago and North Western Transportation Company—Trackage Rights—Over Soo Line Railroad Company Between Wisconsin Rapids and Nekoosa, Wood County, WI,* Finance Docket No. 28323 (ICC served Feb. 16, 1977).

[Finance Docket No. 32737]

Southwest Pennsylvania Railroad Company—Lease and Operation Exemption—Lines of Westmoreland County Industrial Development Corporation and Fay-Penn Land Trust

Southwest Pennsylvania Railroad Company (SWP), a noncarrier, has filed a notice of exemption to lease and operate a rail line owned in part by Westmoreland County Industrial Development Corporation (WCIDC), and in part by Fay-Penn Land Trust (FPLT), both non-profit corporations. The line extends between milepost 0.0+/− at Broad Ford and milepost 9.56+/− at Mt. Pleasant (Broad Ford Line), in Westmoreland and Fayette Counties, PA. The total distance of the rail line is approximately 9.56 miles.[1] Consummation of the proposed transaction took place on June 28, 1995.

This transaction is related to a simultaneously filed notice of exemption in Finance Docket No. 32734, *Phillip C. Larson, Russell A. Peterson and Dennis E. Larson—Continuance in Control Exemption—Southwest Pennsylvania Railroad Company,* in which SWP's shareholders seek to continue in control of SWP and Camp Chase Industrial Railroad Corporation, a class III shortline railroad, when SWP becomes a carrier.[2]

Any comments must be filed with the Commission and served on: Keith G. O'Brien, 1920 N St., NW., Suite 420, Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.

The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–17989 Filed 7–20–95; 8:45 am]

BILLING CODE 7035–01–P

[1] FPLT holds title to the Broad Ford Line between milepost 0.0+/− at Broad Ford and Survey Station 174+56 (approximately milepost 3.3+/−). WCIDC holds title to the remainder, from Survey Station 174+56 (milepost 3.3+/−) to milepost 9.56+/− at Mt. Pleasant.

The Broad Ford Line connects at Everson, PA, with rail lines that SWP seeks simultaneously to acquire from Consolidated Rail Corporation and operate in Finance Docket No. 32692, *Southwest Pennsylvania Railroad Company—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation.*

[Docket No. AB–167 (Sub-No. 1149X)]

Consolidated Rail Corporation—Abandonment Exemption—in Indiana and Cambria Counties, PA

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon 2.6± miles of its line of railroad, known as the Kin Industrial Track, from approximately milepost 35.80 ± to approximately milepost 38.40±, in Indiana and Cambria Counties, PA.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and

[2] Notice of an acquisition and operation exemption was given by the Commission in *Camp Chase Industrial Railroad Corporation—Acquisition and Operation Exemption—Line of Consolidated Rail Corporation,* Finance Docket No. 32581 (ICC served Oct. 21, 1994).

49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 20, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 31, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 10, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Conrail filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 26, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–18050 Filed 7–20–95; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request prior to the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) 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.

Extension of a Currently Approved Collection

(1) Certification by Designated School Official.

(2) INS Form I–538, Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. The Form I–538 is used by the Immigration and Naturalization Service (INS) to obtain information from a designated school official to certify a non-immigrant students eligibility for extension or stay, school transfer, or authorization for off-campus employment or practical training.

(4) 165,000 annual respondents at .063 (4 minutes) per response.

(5) 10,395 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 17, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–17959 Filed 7–20–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) 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.

Extension of a Currently Approved Collection

(1) Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Naturalization Act.

(2) INS Form I–612. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. The Form I–612 is used by the Immigration and Naturalization Service (INS) to obtain information that may be submitted only by an alien who believes that compliance with the foreign residence requirement would impose exceptional hardship on his or her spouse or child who is a citizen of the United States, or a lawful permanent resident, or by an alien who believes that returning to the country of his or her nationality or last permanent residence would subject him or her to persecution on account of race, religion, or political opinion.

(4) 1,300 respondents at .332 hour per response.

(5) 432 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 17, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–17955 Filed 7–20–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) 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 or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Petition To Classify Orphan as an Immediate Relative, and Application for Advance Processing of Orphan Petition.

(2) INS Form I–600 and I–600A. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. The Form I–600 is used by the Immigration and Naturalization Service (INS) to obtain information to determine whether an alien in behalf of whom the petition is made is an eligible orphan as defined in Section 101(b)(1)(F) and is classified as an immediate relative as specified in Section 201(b) of the Immigration and Naturalization Act, 8 United States Code 1151(b).

The Form I–600A is used by the Immigration and Naturalization Service (INS) to obtain information which is used to streamline the procedures for advance processing of orphan petitions. This is necessary to improve service to the public and eliminate delays in processing of orphan petitions filed by individuals traveling abroad to locate or adopt orphans.

(4) 34,000 annual respondents at .5 hour per response.

(5) 17,000 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: July 17, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–17956 Filed 7–20–95; 8:45 am]

BILLING CODE 4410–10–M

Information Collections Under Review

The Office of Management and Budget (OMB) has 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 an 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 and of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of a Currently Approved Collection

(1) Data Relating to Beneficiary of a Private Bill.

(2) INC Form G–79A. Immigration and Naturalization Service, United States Department of Justice.

(3) Primary: Individuals or households. Others: None. The Form G–79A is used by the Immigration and Naturalization Service (INS) to obtain information from beneficiaries and/or interested parties in Private Bill cases. The INS prepares a report to the appropriate Congressional Committee (Senate or House of Representatives) and advise whether a person for whom a Private Bill has been introduced is or is not in violation of Section 212 of the Immigration and Naturalization Act which identifies classes of aliens not eligible for admission to the United States.

(4) 100 annual respondents at 1.0 hour per response.

(5) 100 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: June 17, 1995.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–17957 Filed 7–20–95; 8:45 am]

BILLING CODE 4410–10–M

Drug Enforcement Administration

[Docket No. 95–18]

Shia Ben-Hur, D.V.M.; Revocation of Registration

On December 22, 1994 the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Shia Ben-Hur, D.V.M., of River Hills, Wisconsin (Respondent), proposing to revoke his DEA Certificate of Registration, AB3559652, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent was no longer authorized to handle controlled substances in the State of Wisconsin. 21 U.S.C. 823(f) and 924(a)(3).

By letter dated January 23, 1995, Respondent, through counsel, requested a stay of all proceedings in this matter. Administrative Law Judge Mary Ellen Bittner, before whom this matter was docketed, denied Respondent's request for stay on February 16, 1995, and directed Respondent to file any request for hearing by February 27, 1995. On March 14, 1995, following Respondent's failure to request a hearing on the Order to Show Cause, the administrative law judge issued an Order Terminating Proceedings. The Deputy Administrator hereby enters his final order based upon the record and investigative file pursuant to 21 CFR 1301.57.

On November 2, 1993, Respondent pled guilty to one count of distributing approximately two ounces of cocaine in violation of 21 U.S.C. 841(a) and was sentenced to 30 months incarceration. On January 16, 1994, the Veterinary Examining Board for the State of Wisconsin, by stipulation with Respondent, suspended Respondent's veterinary license until such time as Respondent was released from prison and could address the charges in the complaint filed by the Veterinary Examining Board. As a result, Respondent is no longer authorized to dispense controlled substances in the State of Wisconsin.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized to dispense controlled substances by the state in which he proposes to practice. *See Lawrence R. Alexander, M.D.,* 57 FR 22256 (1992); *Bobby Watts, M.D.,* 53 FR 11919 (1988); *Robert F. Witek, D.D.S.,* 52 FR 4770 (1987). In such cases a motion for summary disposition is properly entertained. There is no need for a plenary evidentiary hearing since there are no questions of fact to be resolved by such a hearing. *Phillip E. Kirk, M.D.,* 48 FR 32887 (1983), aff'd sub nom, *Kirk v. Mullen,* 749 F.2d 297 (6th Cir. 1984); *Floyd A. Santner, M.D.,* 47 FR 51831 (1982). Therefore, because Respondent is no longer authorized to handle controlled substances in the State of Wisconsin, the Deputy Administrator cannot permit him to maintain a DEA Certificate of Registration in that State.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AB3559652, previously issued to Shia Ben-Hur, D.V.M., be, and it is hereby, revoked, and that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective August 21, 1995.

Dated: July 14, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–17932 Filed 7–20–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Agency Recordkeeping/Reporting Requirements To Be Reviewed by the Office of Management and Budget (OMB)

The Department of Labor will submit the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. Copies may be obtained by calling Patricia A. Forkel, ({202} 219–7601). Comments and questions about the ICRs listed below should be directed to Ms. Forkel, Office of Management, Administration and Planning, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210. Dates: Comments on the information collection should be directed to the Agency Clearance Officer within 30 days of this notice.

Type of Review: Extension

Agency: Employment Standards Administration

Title: Reporting and Recordkeeping Requirements for Supply and Service Contractors

OMB Number: 1215–0072

Agency Number: None

Frequency: Annually

Affected Public: State of local governments; Small businesses or organizations; Businesses or other for-profit; Non-profit institutions

	Number of respondents	Hours per response	Subtotal hours
Reporting	64,513	11.01	710,825
Recordkeeping	88,797	155.80	13,836,404
Total Burden Hours	14,547,229		

Description: Recordkeeping and reporting obligations incurred by Federal contractors/subcontractors under E.O. 11246, Section 503 of the Rehabilitation Act of 1973, and 38 USC 2012 are necessary to substantiate compliance with nondiscrimination and affirmative action requirements monitered by the Office of Federal Contract Compliance Programs.

Type of Review: Extension

Agency: Employment Standards Administration

Title: Annual Report of Earnings

OMB Number: 1215–0136

Agency Number: CM–777

Frequency: Annually

Affected Public: Individuals or households

Number of Respondents: 430

Estimated time per respondent: 17 minutes

Total Burden Hours: 122

Description: The Black Lung Beneficiaries' Annual Report of Earnings is used to adjust benefits disbursed for the preceding year and to estimate adjustments, if any, for the following year due to excess earnings.

Type of Review: Extension

Agency: Employment Standards Administration

Title: OWCP Representative Fee Request

OMB Number: 1215–0078

Agency Number: CA–38

Frequency: On occasion

Affected Public: Individuals or households; Business or other for-profit

Number of Respondents: 14,000

Estimated average time per respondent: 1 hour

Total Burden Hours: 10,000

Description: This information collection is submitted by representatives of OWCP claimants to request approval of a fee for services provided to claimants.

Signed at Washington, D.C. this 17th day of July 1995.

Margaret J. Sherrill,

Chief, Branch of Management, Review and Analysis, Division of Financial Management, Employment Standards Administration.

[FR Doc. 95–17997 Filed 7–20–95; 8:45 am]

BILLING CODE 4510–27–M

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good clause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume VI

California
CA950029 (Jul. 21. 1994)
California
CA950030 (Jul. 21. 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are

in parentheses following the decisions being modified.

Volume I

New York
NY950002 (Feb. 10, 1995)
NY950003 (Feb. 10, 1995)
NY950004 (Feb. 10, 1995)
NY950005 (Feb. 10, 1995)
NY950006 (Feb. 10, 1995)
NY950008 (Feb. 10, 1995)
NY950013 (Feb. 10, 1995)
NY950017 (Feb. 10, 1995)
NY950018 (Feb. 10, 1995)
NY950022 (Feb. 10, 1995)
NY950031 (Feb. 10, 1995)
NY950033 (Feb. 10, 1995)
NY950034 (Feb. 10, 1995)
NY950037 (Feb. 10, 1995)
NY950038 (Feb. 10, 1995)
NY950039 (Feb. 10, 1995)
NY950040 (Feb. 10, 1995)
NY950042 (Feb. 10, 1995)
NY950046 (Feb. 10, 1995)
NY950048 (Feb. 10, 1995)
NY950049 (Feb. 10, 1995)
NY950051 (Feb. 10, 1995)
NY950074 (Feb. 10, 1995)
NY950077 (Feb. 10, 1995)

Volume II

Pennsylvania
PA950005 (Feb. 10, 1995)

Volume III

Kentucky
KY950003 (Feb. 10, 1995)
KY950004 (Feb. 10, 1995)
KY950027 (Feb. 10, 1995)
KY950028 (Feb. 10, 1995)
KY950029 (Feb. 10, 1995)
KY950035 (Feb. 10, 1995)

Volume IV

Illinois
IL950015 (Feb. 10, 1995)
Indiana
IN950004 (Feb. 10, 1995)
IN950006 (Feb. 10, 1995)
Minnesota
MN950007 (Feb. 10, 1995)
MN950008 (Feb. 10, 1995)
MN950012 (Feb. 10, 1995)
MN950015 (Feb. 10, 1995)
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MN950039 (Feb. 10, 1995)
MN950058 (Feb. 10, 1995)
MN950059 (Feb. 10, 1995)
MN950061 (Feb. 10, 1995)
Ohio
OH950001 (Feb. 10, 1995)
OH950002 (Feb. 10, 1995)
OH950003 (Feb. 10, 1995)
OH950028 (Feb. 10, 1995)
OH950029 (Feb. 10, 1995)
OH950034 (Feb. 10, 1995)
Wisconsin
WI950008 (Feb. 10, 1995)
WI950010 (Feb. 10, 1995)
WI950019 (Feb. 10, 1995)
WI950020 (Feb. 10, 1995)
WI950021 (Feb. 10, 1995)

Volume V

Iowa
IA950004 (Feb. 10, 1995)
IA950005 (Feb. 10, 1995)
IA950010 (Feb. 10, 1995)
IA950014 (Feb. 10, 1995)
IA950016 (Feb. 10, 1995)
IA950031 (Feb. 10, 1995)
IA950032 (Feb. 10, 1995)
Kansas
KS950007 (Feb. 10, 1995)
KS950012 (Feb. 10, 1995)
KS950013 (Feb. 10, 1995)
KS950018 (Feb. 10, 1995)
Missouri
MO950002 (Feb. 10, 1995)
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MO950072 (Feb. 10, 1995)
MO950074 (Feb. 10, 1995)
MO950075 (Feb. 10, 1995)
MO950076 (Feb. 10, 1995)
MO950077 (Feb. 10, 1995)
MO950078 (Feb. 10, 1995)
Oklahoma
OK980017 (Feb. 10, 1995)

Volume VI

California
CA950004 (Feb. 10, 1995)
Colorado
CO950021 (Feb. 10, 1995)
CO950022 (Feb. 10, 1995)
Hawaii
HI950001 (Feb. 10, 1995)
Wyoming
WY950004 (Feb. 10, 1995)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 14th day of July 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–17817 Filed 7–20–95; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–09611, et al.]

Proposed Exemptions: General Motors Retirement Program, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written

comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

General Motors Retirement Program for Salaried Employes (the GM Salaried Plan); General Motors Hourly Rate Employes Pension Plan (the GM Hourly Plan); the Saturn Individual Retirement Plan for Represented Team Members (the Saturn Plan); Saturn Personal Choices Retirement Plan for Non-Represented Team Members (the Saturn Choices Plan); and Employees' Retirement Plan for GMAC Mortgage Corporation (the GMAC Plan; collectively, the Plans)

Located in New York, New York

Application Nos. D–09611, D–09612 and D–09809

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 section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, effective May 21, 1993, to the purchase by a partnership (the Partnership) of a parcel of improved real property (the Property) located in Washington, DC, from Collin Equities, Inc. (the Seller), a party in interest with respect to the Plans, pursuant to an agreement which provided that the Plans would invest in the Partnership upon purchase of the Property, provided the following conditions are met:

(a) the terms of the purchase of the Property were no less favorable to the Plans than those negotiated at arm's length in similar circumstances with unrelated third parties;

(b) the fair market value of the Property was determined by an independent, qualified appraiser;

(c) the Plans paid no commissions or fees in regard to the transaction; and

(d) prior to investing in the Partnership an independent, qualified fiduciary acting on behalf of the Plans, reviewed and recommended approval of the transaction and determined that the transaction was in the best interest of the Plans and the participants and beneficiaries of such Plans.[1]

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective retroactively, as of May 21, 1993.

Summary of Facts and Representations

1. It is represented that the Plans are qualified under section 401(a) of the Code and were established by GM to provide retirement benefits to its eligible salaried and hourly employees and to employees of approximately twenty (20) GM affiliates worldwide.[2] The Plans which are the applicants for this proposed exemption are the GM Salaried Plan, the GM Hourly Plan, the Saturn Plan, the Saturn Choices Plan, and the GMAC Plan. As of October 1, 1993, the GM Salaried Plan, the GM Hourly Plan, the Saturn Plan, and the Saturn Choices Plan covered approximately 831,532 participants (both active employees and retirees) and beneficiaries. In addition, as of June 21, 1994, there were approximately 2,761 participants in the GMAC Plan.

2. The control and management of the assets of the Plans (including the investments described herein) are under the authority of the Finance Committee (the Committee) of the Board of Directors of GM, which is the ''named fiduciary'' (as such term is defined in the Act) of the Plans. In this regard, it is represented that the Committee acts on behalf of the Plans through duly authorized delegates. One such delegate of the Committee is the General Motors Investment Management Corporation (GMIMCO), a wholly-owned subsidiary of GM established in 1990. In this regard, GMIMCO serves as the investment manager for the Plans. As of December 31, 1992, GMIMCO had approximately $7.7 billion in assets under its management, including a portion of the assets of the Plans.

GMIMCO maintains a staff of investment experts who work for the Plans and for certain affiliates of GM.

[1] For purposes of this exemption reference to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] It is represented that employers whose employees are covered by the Plans are as follows: (1) GM; (2) Delco Electronics Service Corporation; (3) Fisher Lumber Corporation; (4) GMAC; (5) GMAC, Australia; (6) GMAC, Colombia, S.A. (7) GMAC, Continental; (8) GMAC, International; (9) GMAC, South America; (10) General Motors Investment Management Corporation; (11) General Motors Interamerica Corporation; (12) General Motors Overseas Corporation; (13) General Motors Overseas Distribution Corporation; (14) GMAC Capital Corporation; (15) GM Personnel Services, Inc.; (16) Holdens Motor Overseas Corporation; (17) Motors Insurance Corporation; (18) Motors Trading Corporation; (19) Saturn Corporation; (20) MIC Re Corporation; and (21) GMAC Mortgage Corporation.

GMIMCO is compensated by GM for the services it renders to the Plans, and to the extent permitted by the Act, the Plans reimburse GM for GMIMCO's expenses.[3]

3. It is represented that GM has established various trusts, exempt from tax under section 501(a) of the Code, to hold and manage the invested funds used for providing benefits under the Plans. In this regard, certain assets of the GM Hourly Plan, the Saturn Plan, the Saturn Choices Plan, and the GMAC Plan are held in one master trust (the Hourly Trust), while certain assets of the GM Salaried Plan are held in another master trust (the Salaried Trust). As of September 30, 1993, the aggregate fair market value of the assets of the Hourly Trust and the Salaried Trust was approximately $19.7 billion and $20.8 billion, respectively.

It is represented that the Hourly Trust and the Salaried Trust are the sole beneficial owners of the First Plaza Group Trust (the Group Trust), a New York trust, which is also exempt from taxation under section 501(a) of the Code. Mellon Bank, N.A. serves as trustee of the Group Trust. GMIMCO has authority, responsibility, and control with respect to the assets of the Plans invested in the Group Trust and also serves as the independent fiduciary for the transaction described below which is the subject of this proposed exemption. Further, in August 1990, the Plans engaged Sarofim Realty Advisory (Sarofim) (formerly FS Realty Partners) of Dallas, Texas, an experienced real estate investment advisory firm, to serve as non-discretionary investment advisor to the Plans and to GMIMCO.

4. On August 9, 1991, the Group Trust entered into a subscription agreement (the Subscription Agreement) with the Hines Acquisitions No. 1 Limited Partnership, a Texas limited partnership. The Hines Acquisitions No. 1 Limited Partnership serves as the general partner (the GP) in the Partnership in which the Plans are invested. The GP is unrelated to GM, the Plans, or any other parties involved in the transactions. The Partnership is a Texas limited partnership known as the 1991 Acquisition Fund No. 1 Limited Partnership. It is represented that the GP organized the Partnership for the purpose of acquiring, improving, managing, operating, leasing, redeveloping, selling, and disposing of commercial office and retail real estate. Pursuant to the terms of the Subscription Agreement, the Group Trust agreed to become the sole limited partner of the Partnership.

5. In connection with the formation of the Partnership, the GP and the Group Trust executed a partnership agreement (the Partnership Agreement) which was attached to and incorporated by reference into the Subscription Agreement. It is represented that contributions to capital of the Partnership under the Partnership Agreement were to be made 5 percent (5%) by the GP and 95 percent (95%) by the Group Trust.[4] As of September 30, 1993, the percentages of the fair market value of the Hourly Trust and the Salaried Trust committed through the Group Trust to the Partnership were 0.48% and 0.46%, respectively.

Under the terms of the Partnership Agreement, the GP is, among other things, responsible for all decisions regarding acquisition, financing redevelopment, leasing, managing, and disposition of real estate owned by the Partnership. The GP also retains oversight over persons retained to provide assistance or services in connection with such matters. In this regard, it is represented that the Partnership has been and will be managed by the GP by affiliates of the GP, or through independent contractors retained by the Partnership, pursuant to the terms of third party management agreements, the form and content of which has been approved by the Group Trust. Additional responsibilities of the GP, include preparing budgets in connection with acquisitions, operations, renovations, and improvements for each property the Partnership owns and maintaining books, records, and bank accounts for the Partnership. Further, the GP has the exclusive responsibility to identify investment opportunities for the Partnership and to negotiate the acquisition of such investment opportunities. As a limited partner in the Partnership, the Group Trust does not have the right to propose or negotiate acquisitions on behalf of the Partnership. However, the Group Trust, acting through GMIMCO, does have the right to approve all acquisitions by the Partnership which have been negotiated by the GP.

6. In July, 1992, the GP identified the Property as the first long-term investment opportunity for the Partnership. The Property is described as a twelve story office building (the Building), built in 1991, located at 700 Eleventh Street, N.W. on 37,370 square feet of land (the Land) at a subway station in the heart of downtown Washington, DC. The Building, commonly referred to as the Edward Bennett Williams Building, has 292,919 square feet of net rentable office space, 8,803 square feet of net rentable retail space on the first floor, and a five (5) level underground parking garage. It is represented that, as of March 1, 1993, 55.2% of the Property was leased. As of December 16, 1993, the tenants of the Property were: (1) Williams & Connolly, a law firm, with a lease dated September 24, 1991; (2) Kimberly-Clark Corporation, with a lease dated December 20, 1991; and (3) Massachusetts Mutual Life Insurance Company, with a lease dated April 30, 1993. It is represented that none of the lessees are parties in interest with respect to the Plans.

At the time the Property was identified in July 1992, as a possible investment for the Partnership, the GP entered into discussions with the owner of the Property. The Seller is a Texas corporation which is wholly-owned by Wells Fargo Bank, N.A. (Wells Fargo). It is represented that unbeknownst to the GP in July 1992, Wells Fargo was then serving as a fiduciary with respect to other assets of the Plans not involved in the Partnership. Accordingly, the Seller, by virtue of being a wholly-owned subsidiary of Wells Fargo, was a party in interest with respect to the Plans when the GP negotiated the purchase of the Property.

It is represented that after the principal business terms of the transaction were established through competitive bidding with other potential purchasers, the GP was selected by the Seller as the most attractive buyer. It is represented that in October 1992, officials at GMIMCO, following routine practices designed to avoid engaging in prohibited transactions, identified the Seller as a subsidiary of a service provider with

[3] The applicants state that any fees or expenses received by GMIMCO for the provision of services to the Plans, the compensation received by GMIMCO from GM, or the reimbursement by the Plans to GM of expenses incurred by GMIMCO in the provision of such services will satisfy the requirements as set forth in section 408(b)(2) of the Act. However, the Department is providing no opinion as to whether the payment of any fees, expenses, compensation, or reimbursement under the circumstances described herein would satisfy the requirements of section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b-2).

[4] It is represented that based on contributions of capital, the Group Trust is a 95 percent (95%) limited partner in the Partnership that owns the Property. However, under the terms of the Partnership Agreement, in certain favorable scenarios with regard to the internal rate of return, the General Partner's right to receive distributions of profits can increase from 5 percent (5%) to 15 percent (15%). The Department, herein, is offering no relief from any of the provisions of part 4, subpart B, of Title I of the Act with respect to the receipt by the GP of compensation based on this performance incentive feature in the Partnership Agreement.

respect to the Plans, albeit one without any authority or responsibility with respect to the assets involved in the subject transaction.

Subsequently, on February 17, 1993, the GP and the Seller executed a purchase and sale agreement (the Purchase Agreement) in which the Seller agreed to sell the Property to the GP for a purchase price of $60,000,000. For purposes of the Purchase Agreement, the Property included: (a) the Land; (b) the Building; (c) the related tangible personal property and fixtures (the Personalty); (d) all leases, licenses, and occupancy agreements demising the space in the Building (the Leases); (e) prepaid rents and deposits; (f) certain contracts (*e.g.*, warranties, indemnities, licenses, permits) to the extent assignable without cost; (g) other miscellaneous property (*e.g.*, telephone exchanges, trade names, trademarks, plans, drawings, surveys, and technical descriptions; and (h) except as specifically limited or excluded, all maintenance, service, and utility contracts that relate to the ownership, maintenance, construction, repair, and/or operation of the Land, the Building, the Personalty, and the Leases. In accordance with the terms of the Purchase Agreement, the GP subsequently, at closing on May 21, 1993, assigned its rights as purchaser of the Property to the Partnership.

7. Pursuant to the terms of the Subscription Agreement, the GP and the Group Trust agreed to form the Partnership on the date that the Partnership first invested in real estate. Accordingly, prior to the date the Partnership acquired the Property, it is represented that the Partnership had no assets. In this regard, the capital contributions of the Hourly Trust and the Salaried Trust committed through the Group Trust to the Partnership were used to pay the Group Trust's *pro rata* share of the purchase price for the Property. It is represented that the Partnership acquired the Property at closing on May 21, 1993, for a purchase price of $60,000,000.

8. An appraisal of the Property was performed independently by Delta Associates, Inc. (Delta), a qualified appraisal firm in Alexandria, Virginia. The appraisal report, dated April 5, 1993, was prepared in conjunction with a loan disbursed at closing on May 21, 1993, by Credit Lyonnais Cayman Island Branch to the Partnership secured by the Property. However, Delta has consented to the use of such appraisal report in conjunction with this proposed exemption.

In the appraisal report, Delta estimated that, as of March 1, 1993, the market value of the leased fee interest in the Property on an ''as is'' basis was $72 million and on an ''as if stabilized'' basis was $88 million. In the opinion of Delta after the ''first stabilized year of operation,'' assumed to be March 1995, the fair market value of the leased fee interest in the Property will be $95 million. In addition, Delta estimated that the ''insurable value'' of the Property, as of March 1, 1993, was $47.4 million.

9. Subsequently, on December 16, 1993, the subject application for retroactive exemption from the prohibited transaction restrictions of the Act was filed on behalf of the Plans with the Department.

10. The applicants maintain that, while the issue is not free from doubt, the Partnership is a real estate operating company, as defined in 29 CFR § 2510.3–101 and therefore the sale of the Property to the Partnership by the Seller was not a *direct* prohibited transaction between the Plans and a party in interest. In this regard, the applicants obtained an opinion of counsel with respect to the issues of whether the Partnership constituted a ''real estate operating company'' on the date of the purchase by the Partnership of the Property and whether the purchase of the Property by the Partnership from the Seller, a party in interest with respect to the Plans, constituted a prohibited transaction under section 406 of the Act.

In the opinion of the applicants, no exemption from the restrictions of section 406 of the Act relating to direct prohibited transactions is necessary in connection with the sale of the Property by a party in interest to the Partnership nor for receipt of any compensation by the GP of the Partnership, because the purchase of the Property by the Partnership did not involve assets of the Plans by virtue of the operation of the Partnership as a ''real estate operating company.'' [5]

Notwithstanding their reliance on the plan assets analysis described above, the applicants continue to request retroactive relief under section 406(a) for any *indirect* prohibited transaction that may have occurred. The applicants point out that authority on the issue of what constitutes an ''indirect'' prohibited transaction is still quite sparse. In the opinion of the applicants, the following elements of the subject transaction, taken together, raise an *indirect* prohibited transaction issue: (1) the purchase of the Property by the Partnership and the Group Trust's investment in such Partnership occurred on the same day; (2) the Group Trust's investment provided the Partnership with 95 percent (95%) of the funds used to cover the purchase price of the Property; and (3) the Property and the Seller had been specifically identified prior to the time the funds were forwarded by the Group Trust to the Partnership. Further, of particular interest to this issue is the fact that the Partnership is not designed to be a ''blind pool'' investment vehicle where a general partner, so long as it follows the criteria set forth in a partnership agreement, has plenary discretion to invest committed partnership funds in any real property meeting those criteria and the unfettered ability to call funds from a limited partner to complete such investments without any approval rights in such limited partner. Rather, the Group Trust as subscriber had a right to examine and approve or disapprove the specific investment opportunity of the Partnership in the Property, although upon the signing of the Subscription Agreement in 1991, the Group Trust became committed to invest up to $95 million in the Partnership at such times as appropriate investments were identified and the Partnership was formed. Accordingly, at the time the Group Trust actually purchased its interest in the Partnership and

[5] Under the ''plan asset'' regulations of the Department, as set forth in 29 CFR § 2510.3–101(h)(3), when a plan or a related group of plans owns all of the outstanding equity interests (other than director's qualifying shares) in an entity, its assets include those equity interests and all of the underlying assets of the entity. The applicants maintain that, while for purposes of establishing a limited partnership under Texas law, a general partner must be named in the certificate of limited partnership, the GP, here, is obligated to contribute a significant amount of capital to the Partnership and, thus, is participating in the Partnership for reasons other than to satisfy the minimum state law requirements for treatment of the Partnership as a partnership. Accordingly, the applicants believe that the Partnership assets would not be treated as plan assets for the purpose of applying the fiduciary responsibility requirements of the Act.

In addition, under the ''plan asset'' regulations of the Department, as set forth in 29 CFR § 2510.3–101(e), an entity is treated as a real estate operating company if at least 50 percent of its assets are invested in real estate which is managed or developed and with respect to which the entity has the right to substantially participate directly in management or development activities. Further, in the ordinary course of its business, the entity must actually engage in real estate management or development activities. The applicants maintain that they are comfortable in relying on their own analysis that the Partnership operation meets these requirements.

The Department, herein, is expressing no opinion whether the underlying assets of the Partnership are ''plan assets'' or whether the Partnership, as established or in the manner operated, satisfies the definition of a ''real estate operating company.'' Further, the Department is not proposing relief, herein, for any *direct* transaction between the Partnership or the Plans and a party in interest with respect to such Plans.

forwarded its 95 percent (95%) *pro rata* share of the initial capital call on the day of the closing, May 21, 1993, the Group Trust and the GP knew that the proceeds of the purchase of its interest in the Partnership would be forwarded almost immediately by the GP together with the GP's own capital contribution on behalf of the Partnership, to the Seller, a party in interest with respect to the Plans.

Although applicants' counsel in analyzing these elements concluded that no indirect prohibited transaction occurred, counsel represents that this conclusion is ''not entirely free from doubt,'' in part because of the dearth of authority on what constitutes an indirect prohibited transaction. The applicants believe that the investment by the Group Trust in the Partnership could be viewed as an indirect sale or exchange of property between the Plans and a party in interest, the Seller, in violation of section 406(a)(1)(A) of the Act or a use of plan assets by or for the benefit of a party in interest in violation of section 406(a)(1)(D) of the Act. Accordingly, the applicants seek retroactive relief from such provisions of the Act at closing on May 21, 1993, the date when the transaction was entered.

11. The applicants maintain that the requested retroactive exemption is warranted, because the transaction was consummated under conditions that assured that the rights of participants and beneficiaries of the Plans were protected. In this regard, Sarofim served as an advisor to GMIMCO with respect to, among other things, whether to approve the acquisition of the Property by the Partnership as proposed by the GP. Specifically, it is represented that Sarofim reviewed and recommended the Partnership investment to GMIMCO and recommended approval of the Property acquisition. Further, GMIMCO, acting as investment manager on behalf of the Plans, after considering the terms of the acquisition of the Property, as negotiated by the GP, and the recommendations and analyses of Sarofim, made the ultimate decision on behalf of the Plans and the Group Trust to invest in the Partnership and to approve the acquisition of the Property by such Partnership. It is represented that Sarofim is unaffiliated with the Seller or Wells Fargo, and that there is no direct or indirect affiliation between GMIMCO (or GM) and Wells Fargo or the Seller.

It is represented that the terms of the Partnership Agreement were negotiated by GMIMCO and Sarofim, on behalf of the Plans, at arm's length with the GP. Neither GMIMCO, GM, nor Sarofim have any direct or indirect affiliation with the GP. Additionally, the terms of the Partnership Agreement were negotiated at a time when the opportunity to acquire the Property had not arisen.

The purchase price for the Property paid by the Partnership and the non-price terms of the acquisition were negotiated on an arm's length basis between unrelated parties, the GP and the Seller. Further, the purchase of the Property was also reviewed and recommended by Sarofim and approved by GMIMCO.

Although the Seller of the Property is a party in interest with respect to the Plans, it is represented that this status resulted solely by reason of the Seller's relationship to Wells Fargo, a service provider with respect to other assets of Plans not involved in the Partnership. In this regard, it is represented that Wells Fargo was not a trustee of the Group Trust and had no authority, responsibility, or control with respect to the assets of the Group Trust that were invested in the Partnership. Further, it is represented that Wells Fargo does not have, and did not exercise, any of the authority, control or responsibility that makes it a fiduciary with respect to the Plans in connection with the decision by the Plans (acting through GMIMCO) to invest through the Group Trust in the Partnership or the decision by the Plans (acting through GMIMCO) to approve the Partnership's investment in the Property.

On August 9, 1991, at the time the Group Trust entered into the Subscription Agreement, it is represented that there was no arrangement for the Partnership to specifically acquire the Property. Rather, the Partnership agreement called for the Group Trust to 95 percent (95%) fund the purchase of a property once identified by the GP and agreed to by GMIMCO. Neither the Plans, the Group Trust, GMIMCO, nor Sarofim participated in the search for the Property. It is represented that the GP had no knowledge of the relationship between Wells Fargo and the Plans in July 1992, at the time the Property was identified as an investment opportunity for the Partnership. It is further represented that officials at GMIMCO did not know that the Seller was a subsidiary of a service provider with respect to the Plans until October 1992. In addition, Sarofim, an experienced real estate investment advisory firm, has served since August 1990, as non-discretionary investment advisor to the Plans and to GMIMCO. Accordingly, it is represented that the Group Trust's commitment to become a limited partner in the Partnership was not in any way conditioned on the acquisition of the Property.

11. It is represented that the transaction was in the interest of the Plans and their participants and beneficiaries. In this regard, the acquisition of the Property was consummated on terms customary in the commercial real estate market after extensive negotiations between the GP and the Seller who are unrelated. The purchase price was competitively bid by the GP and approved by both Sarofim and GMIMCO. It is represented that the GP negotiated a purchase price of $60 million that is approximately 14 percent (14%) lower than the $69.9 million dollar asking price for the Property. Further, Delta's appraisal of the Property indicated a value for the Property of $72 million on an ''as is'' basis in March, 1993, which was approximately 20 percent (20%) above the purchase price paid by the Partnership. Accordingly, prior to consummation of the acquisition of the Property at the $60 million dollar purchase price, both GMIMCO and Sarofim specifically concluded that the acquisition of the Property at the price negotiated by the GP was in the best interest of the Plans.

It is represented that Sarofim analyzed at length the potential acquisition of the Property taking into account various scenarios regarding pricing, absorption/leasing, tenant finish costs, tenant expansions, renewal of leases, residual capitalization rates, and financing parameters. Based on this exhaustive analysis, Sarofim recommended to the Plans a pricing range for the Property that would warrant the Group Trust's approval of the acquisition by the Partnership. It is represented that as the ultimate acquisition price for the Property was within the recommended range, both Sarofim and GMIMCO determined that the favorable pricing of the Property would help produce an attractive return for the Plans and was thus in their best interest.

It is further represented that the acquisition of the Property was recommended to the Plans for the following reasons: (a) the Property is a recently completed Class ''A'' building with high quality systems and construction quality; (b) the Property has advantageous sub-surface parking, which is a major leasing advantage in its market; (c) the Property was 53 percent (53%) leased at the time of the transaction, primarily to a prestigious national law firm with excellent credit; (d) tenants have demonstrated a strong demand to lease vacant space in

commercial buildings located in the East End submarket of Washington, DC over the past five (5) years; (e) the Property has direct access to a major transfer station in the subway system; (f) the Property has access to adjacent and nearby hotels and to retail amenities; (g) the shape of the Property facilitates either full-floor users or multi-tenant layouts; and (h) the recommended pricing range was considered substantially below the replacement cost for the Property. Sarofim and GMIMCO concluded that for all of the above reasons the acquisition of the Property should help to form the core of real estate-related investments for the Plans.

After reviewing the analysis of Sarofim, GMIMCO concluded that the ownership of a substantial limited partnership interest in the Partnership that acquired the Property for a price within the range recommended would give the Plans the dual benefits of (1) stable returns from participation in high quality office and retail buildings in attractive urban real estate markets at advantageous prices, and (2) joint investment with the GP and its affiliate, Hines LP, a national real estate development and management firm with expertise in the acquisition, management, and leasing of such properties. Accordingly, both GMIMCO and Sarofim concluded that the proposed acquisition of the Property was favorable to the Partnership and by extension to the Plans.

12. The applicants maintain that the exemption is administratively feasible, because the transaction involves a one-time event that has been completed. In this regard, as the transaction has already been consummated, it is represented that no ''ongoing'' involvement of the Department will be required to implement the exemption.

13. In summary, the applicants represent that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) the terms of the Partnership Agreement were negotiated at arm's length between the GP, acting on behalf of the Partnership, and GMIMCO and Sarofim, acting on behalf of the Plans;

(b) the terms of the Partnership Agreement were negotiated at a time when the Property acquisition opportunity had not arisen;

(c) the terms of the Purchase Agreement for the Property were negotiated at arm's-length between the GP and the Seller, who are unrelated parties;

(d) the acquisition of the Property was consummated on terms customary in the commercial real estate market;

(e) GMIMCO and Sarofim, respectively, an experienced real estate investment manager and an advisor acting on behalf of the Plans, reviewed, recommended, and approved the subject transaction;

(f) GMIMCO and Sarofim determined that the subject transaction was feasible, in the interest of the Plans, and protective of the participants and beneficiaries of such Plans;

(g) the fair market value of the Property was determined by Delta, an independent, qualified appraiser;

(h) the Plans paid no commissions or fees in regard to the transaction;

(i) the transaction involved a one-time event that has been completed and does not require monitoring.

Notice to Interested Persons

It has been requested on behalf of the Plans that the Department waive the requirement to separately notify each participant, retiree, and beneficiary of the Plans of the proposed transaction. In this regard, it is represented that the time and expense of individually notifying such parties is substantial. Further, it is represented that the interests of the current employees are identical to those of the retirees, terminated participants, and beneficiaries with respect to the exemption application. In this regard, the current employees can effectively and adequately represent such interests. Moreover, several groups of employees are represented by unions, which will be notified as described in the paragraph below. Accordingly, the Department has determined that the only practical form of providing notice to interested persons is by posting on all bulletin boards normally used for employee notices of this nature by all GM-affiliated employers whose employees are covered by the Plans a copy of the notice of pendency of this proposed exemption (the Notice) as published in the **Federal Register**, a summary of the exemption request, as approved by the Department (the Summary), together with the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2) (the Supplemental Statement), which shall inform all interested persons of their right to comment. Such posting shall occur within ten (10) days of the date of the publication in the **Federal Register** of the Notice. In addition, within ten (10) days of the publication of the Notice in the **Federal Register**, GM will mail first-class to each of the unions representing employees covered by the Plans a copy of the Notice, the Summary, and the Supplemental Statement. The names of the unions specifically to be notified are as follows: (1) International Union, United Automobile, Aerospace and Agricultural Implement Workers of America; (2) Brotherhood of Carpenters and Joiners of America; (3) International Die-Sinkers Conference; (4) International Union of Electronic, Electrical, Technical, Salaried Machine & Machine Workers, AFL-CIO; (5) Pattern Makers League of North America, AFL-CIO; (6) International Union of Operating Engineers; (7) Metal Polishers, Buffers, Platers and Allied Workers International Union; (8) International Brotherhood of Electrical Workers; (9) International Association of Machinists; (10) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; (11) United Rubber, Cork, Linoleum and Plastic Workers of America; (12) Sign, Pictorial and Display Union, Brotherhood of Painters, Decorators and Paperhangers; (13) United Plant Guard Workers of America; and (14) Automotive, Petroleum and Allied Industries Employe Union.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

John B. Toomey Rollover IRA (the IRA) Located in Lorton, Virginia
[Application No. D–09819]

Proposed Exemption

The Department is considering granting an exemption under the authority of 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 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 installment sale of 36.2 shares of common stock (the Stock) in JBT Holding Corporation (JBT) by the IRA [6] to JBT, a disqualified person with respect to the IRA; provided that: (a) the purchase price JBT pays for the Stock is the *greater* of $410,146 or the fair market value of the Stock on the date of the sale; (b) the fair market value of the Stock is determined by a qualified independent appraiser, as of the date of the sale; (c) the terms of the transaction are no less favorable to the IRA than those negotiated at arm's length with unrelated third parties in similar circumstances; (d) the trustee of the IRA monitors compliance with the terms of

[6] Pursuant to 29 CFR 2510.3–2(d), the IRA is 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.

the transaction throughout the duration of the installment sale; (e) the IRA receives a cash downpayment of no less than $210,146 on the date of the sale and thereafter receives three (3) equal annual installment payments of $66,667, the first of which is due and payable December 31, 1995, plus interest at the fair market rate of interest, as determined by an independent, qualified third party, as of the date of the transaction, on the outstanding balance of the installment payments, payable annually until all the installment payments have been made by JBT on or before December 31, 1997; (f) the outstanding balance of the installment payments at no time exceeds 25 percent (25%) of the value of the assets of the IRA; (g) the outstanding balance on the installment payments is secured by a recorded first mortgage interest in real property pledged by JBT in favor of the IRA; (h) the collateral which secures the installment payments has a value, as determined by an independent, qualified appraiser, which at all times is no less than 150 percent (150%) of the outstanding balance of the installment payments; and (i) the IRA pays no commissions, fees, or other expenses in connection with the transaction.

Summary of Facts and Representations

1. The IRA is a self-directed IRA described in section 408(a) of the Code. John B. Toomey (Mr. Toomey), the applicant for exemption, is the creator of the IRA, and the sole participant and beneficiary in the IRA. It is represented that Advest, Inc., located in Washington, DC, serves as the trustee of the IRA and has custody over the Stock held in the IRA. However, Mr. Toomey has investment discretion over the assets of the IRA, including the Stock, and therefore, is a fiduciary and a disqualified person with respect to the IRA, pursuant to section 4975(e)(2)(A) of the Code. As of September 9, 1994, the IRA had approximately $810,775 in total assets. As of September 9, 1994, approximately 50.6 percent (50.6%) of the IRA's assets consisted of JBT Stock. The remaining portion of the IRA's assets are held in other securities and cash. It is represented that the IRA acquired the JBT Stock as a result of a rollover by Mr. Toomey of a distribution to him of his vested benefits from a PAYSOP/401(k) plan (the PAYSOP), a tax qualified pension plan sponsored by VSE Corporation (VSE).

2. VSE, a Delaware corporation with offices in Alexandria, Virginia, is engaged in the business of providing engineering services. In 1992, due to differences between Mr. Toomey and other members of the VSE management group regarding future business activities, VSE was split into two separate groups, pursuant to a tax free reorganization under section 368(a)(1)(D) of the Code. To effectuate such reorganization, JBT, a Delaware corporation with offices located in Lorton, Virginia, was created in August 6, 1992. As part of the reorganization, VSE transferred all of the issued and outstanding shares of stock in three (3) VSE subsidiaries to JBT in exchange for all of the shares of JBT Stock. The exchange agreement was approved by VSE stockholders on October 17, 1992 and became effective October 31, 1992. In a concurrent transfer, VSE distributed all of the JBT Stock to Mr. Toomey, the members of his immediate family, and the PAYSOP in exchange for an aggregate of 808,649 shares of VSE common stock which these parties owned on October 17, 1992. Concurrent with the exchange of stock pursuant to the reorganization, Mr. Toomey separated from service from VSE and received a lump sum distribution as a participant in the VSE PAYSOP and in another pension plan sponsored by a VSE affiliate. It is represented that this distribution was rolled over within the sixty (60) day rollover period into the IRA. It is represented that a part of this rollover distribution consisted of the JBT Stock which in the reorganization had been exchanged for shares of VSE common stock held in the PAYSOP.

3. JBT is the parent holding company of three (3) wholly owned subsidiaries: (a) Metropolitan Capital Corporation (MetCap); (b) Design & Production, Inc. (D&P); and (c) Starr Management Corporation (Starr). It is represented that, as of December 31, 1993, on a consolidated financial statement the total assets of JBT and its subsidiaries was $20,318,107. Mr. Toomey is the president and the chief executive officer of JBT. Mr. Toomey also serves on the Board of Directors of JBT.

MetCap, a Delaware Corporation incorporated in 1970, is an investment company that provides venture capital to companies which, in general, are closely-held, non-mature small business concerns. Mr. Toomey is the president and chief executive officer of MetCap. MetCap pays a management and administrative services fee to JBT.

D&P, incorporated in Virginia in 1949 under the name Industrial Display, Inc., is an exhibit and graphics design firm which fabricates and installs custom exhibits and audio-visual systems for museums, trade shows, theme parks, and other exhibitions under fixed-price contracts with various governments and private industries. D&P owns the building which includes the offices and shop of JBT in Lorton, Virginia. Julian F. Barnwell, a minority shareholder and member of the Board of JBT is the President of D&P.

Starr, a Delaware corporation established in 1972, primarily engages in property management and secondarily in property development. Starr owns the collateral which will secure the outstanding balance of the installment payments with respect to the proposed transaction. Mr. Toomey is the president and chief executive officer of Starr. Starr pays a management and administrative services fee to JBT.

4. The stock of JBT is closely held by Mr. Toomey, his immediate family, and his IRA. Mr. Toomey and his family own a 96.38 percent (96.38%) interest or 963.8 shares out of the 1000 issued and outstanding shares of JBT Stock. The IRA owns a 3.62 percent (3.62%) interest in JBT or 36.2 shares of the 1,000 issued and outstanding shares of JBT Stock. As Mr. Toomey and his family are the only shareholders of the Stock, other than the IRA, there is concern that potential conflicts of interest may arise between the actions Mr. Toomey takes on behalf of his IRA and the business decisions he makes with respect to JBT. Mr. Toomey is also concerned that the diversification and liquidity of the IRA portfolio is limited by the IRA's continued holding of the Stock. Accordingly, Mr. Toomey requests an exemption to permit JBT to purchase the Stock from the IRA. In this regard, JBT is a disqualified person with respect to the IRA, pursuant to section 4975(e)(2)(G) of the Code, because fifty percent (50%) of the Stock of JBT is owned by Mr. Toomey, a fiduciary and disqualified person with respect to the IRA.

5. JBT has offered to purchase the 36.2 shares of the JBT Stock currently held by the IRA at the *greater* of $410,146 or the fair market value of the Stock on the date of the sale. However, in this regard, it is represented that JBT would suffer a large cash drain in paying all of the purchase price to the IRA in a single lump sum. For this reason, JBT proposes to purchase the Stock in an installment sale. It is represented that immediately upon execution of the transaction JBT will receive all of the Stock from the IRA in exchange for a cash downpayment of $210,146 of the purchase price made to the IRA. Thereafter, it is represented that JBT will pay off the remaining portion of the purchase price of the Stock in three (3) equal annual installment payments of $66,667. The first of the installment payments is due and payable December 31, 1995. Further, JBT proposes to pay

annually interest at the rate of 10 percent (10%) per annum on the outstanding balance of the installment payments, until all installment payments have been made on or before December 31, 1997. In this regard, C.S. Burke III (Mr. Burke), Senior Vice President of Burke & Herbert Bank and Trust Company of Alexandria, Virginia, after reviewing the terms of the transaction, stated, in a letter dated December 29, 1994, that the terms of the proposed transaction are commercially reasonable with regard to common banking practices of which he is familiar, carry a reasonable rate of interest, and have terms which conform to standard lending practices. It is further represented that Mr. Burke will determine that the interest rate paid by JBT on the outstanding balance of the installment payments will not be less than the fair market interest rate, as of the date the transaction is entered. With regard to the payment of interest by JBT, Loretta S. Sebastian, vice president and secretary of JBT, has represented in a letter dated December 28, 1994, that she is the corporate official responsible for ensuring that all installment payments, plus interest payable to the IRA, shall be paid timely and completely by JBT when due.

It is anticipated that the outstanding balance of the installment payments at no time will exceed 25 percent (25%) of the value of the assets of the IRA and will be secured by the value of the Stock and by a recorded first mortgage interest in the value of two (2) parcels of real property (the Properties). It is represented that upon satisfactory payment of the third and final installment payment to the IRA, the mortgages encumbering the Properties shall be cancelled and the 36.2 shares of JBT Stock then held by JBT shall be retired.

6. The two Properties which JBT will pledge to secure the outstanding balance of the installment payments are described as three bedroom residential townhouse condominiums in the Mill Creek Condominium development. The Properties, located at 758 and 762 Belle Field Road on Solomons Island in Dowell, Maryland, are rented for $950 and $995 a month, respectively. Both of the Properties were five (5) years of age in 1993, and are listed in good condition.

7. On September 1, 1993, the Properties were appraised by Ruth Hendricks and John W. Hersman, SRA, of Maryland Appraisal Services, Inc., located in Prince Frederick, Maryland. The appraisers are independent in that they have no present or prospective interest in the Properties and no personal interest or bias with respect to the parties involved. The appraisers are qualified to value the Properties in that each is certified by the State of Maryland and are members of professional organizations.

As of June 1, 1993, the property located at 758 Belle Field Road was appraised at $200,000. As of June 2, 1993, the property located at 762 Belle Field Road was appraised at $195,000. It is represented that the aggregate appraised fair market value of the two Properties is $395,000 which will constitute approximately 198% of the total installment payments due to the IRA after the downpayment has been made by JBT.

8. It is represented that selling the Stock to JBT is in the interest of the IRA and that the proposed transaction will increase the liquidity of the IRA and facilitate distributions required by law. In this regard, as Mr. Toomey is presently seventy (70) years of age, and it is represented that in the near future the IRA will need more cash than it currently holds in order to make distributions in a timely manner and in the correct amount to Mr. Toomey.

Further, as the JBT Stock constitutes more than 50% of the value of the total assets of the IRA, the IRA's portfolio lacks diversification. In this regard, it is represented that the proposed transaction is in the interest of the IRA in that a non-liquid, non-performing asset will be replaced at not less than its fair market value by an asset that is both liquid and performing.

9. It is represented that the transaction is feasible in that the IRA will incur no commissions, fees, or other expenses in connection with the transaction. In this regard, Mr. Toomey has represented that he will be personally responsible for any and all costs incurred as a result of the proposed transaction. Further, Mr. Toomey represents that the cost of the exemption application and of notifying interested persons will be borne by JBT.

10. It is represented that the purchase price for the Stock proposed by JBT is protective of the IRA in that the IRA will receive the *greater* of $410,146 or the fair market value of the Stock on the date of the sale, as determined by a qualified independent appraiser. In this regard, for the purpose of determining the fair market value of the Stock, a valuation of JBT and its subsidiaries was prepared in a *Business Valuation Report* dated July 20, 1994, by Councilor, Buchanan & Mitchell, P.C., a certified public accounting firm with offices in Bethesda, Maryland (the CPA). According to the CPA, the value of JBT and its subsidiaries, as of December 31, 1993, was $15,107,258, and the value of the 1,000 shares of Stock issued and outstanding equaled $15,107 per share. However, in the opinion of the CPA, a 25 percent (25%) discount on the adjusted net assets of JBT should be imposed for lack of marketability. In this regard, the CPA considered the illiquidity of JBT's corporate assets and the related costs to market and consummate sales transactions for the unrelated business operations of the JBT subsidiaries, as negative influences on the value of JBT. Accordingly, the CPA determined that the discounted value per share of the Stock equalled $11,330. Based on this evaluation, it is represented that the aggregate fair market value of the 36.2 shares of the JBT Stock held by the IRA was $410,146, as of December 31, 1993. It is represented that neither the professionals who worked on this valuation nor the officers or directors of the CPA have any financial interest in JBT, nor was the fee contingent on the value reported for the Stock.

It is further represented that the terms of the proposed transaction are no less favorable to the IRA than those negotiated at arm's length with unrelated third parties in similar circumstances. In this regard, Mr. Burke, an independent qualified third party has determined that the terms of the proposed transaction are commercially reasonable and conform to standard lending practices and that the interest rate is reasonable. It is further represented that Mr. Burke will determine that the interest rate paid by JBT on the outstanding balance of the installment payments will not be less than the fair market interest rate, as of the date the transaction is entered.

Further, the interests of the IRA will be protected throughout the duration of the transaction. In this regard, it is represented that a new legal document will be drawn that appoints Advest Bank as trustee for the limited and express purpose of holding and enforcing the provisions of the proposed transaction. It is anticipated that the assets which are the subject this proposed exemption will be held separately from other IRA assets which are under the custody of Advest, Inc. To accomplish this, a separate custody account will be established at Advest Bank. It is represented that Advest Bank will be responsible for collecting from JBT the installment payments and the interest when due. It is represented that the cash so received by Advest Bank will be transferred on a trustee-to-trustee basis into the IRA at Advest Inc. In the event JBT defaults, it is represented that Advest Bank will foreclose on the Properties which serve

as collateral and secure the outstanding balance of the installment payments in order to protect the IRA.

11. In summary, Mr. Toomey, the applicant, represents that the proposed transaction meets the statutory criteria of section 4975(c)(2) of the Code because:

(a) the purchase price JBT pays for the Stock will be the *greater* of $410,146 or the fair market value of the Stock on the date of the sale;

(b) the fair market value of the Stock will be determined by a qualified independent appraiser, as of the date of the sale;

(c) the terms of the transaction will be no less favorable to the IRA than those negotiated at arm's length with unrelated third parties in similar circumstances;

(d) Advest Bank, acting as trustee on behalf of the IRA, will monitor compliance with the terms of the transaction throughout the duration of the installment sale;

(e) the IRA will receive a cash downpayment of no less than $210,146 on the date of the sale and thereafter will receive three (3) equal annual installment payments of $66,667, the first of which is due and payable December 31, 1995, plus interest at the fair market rate of interest, as determined by an independent, qualified third party, as of the date of the transaction, on the outstanding balance of the installment payments, payable annually until all the installment payments have been made by JBT on or before December 31, 1997;

(f) the outstanding balance of the installment payments will at no time exceed 25 percent (25%) of the value of the assets of the IRA;

(g) the outstanding balance on the installment payments will be secured by a recorded first mortgage interest in real property pledged by JBT in favor of the IRA;

(h) the collateral which will secure the installment payments has a value, as determined by an independent, qualified appraiser, which at all times will be no less than 150 percent (150%) of the outstanding balance of the installment payments; and

(i) the IRA will pay no commissions, fees, or other expenses in connection with the transaction.

Notice to Interested Persons: Because Mr. Toomey is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the **Federal Register**.

For Further Information Contact: Angelena C. Le Blanc of the Department (202) 219–8883. (This is not a toll-free number.)

John L. Rust Co. Profit Sharing Plan (the Plan) Located in Albuquerque, New Mexico [Application No. D–09943]

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 and proposed purchases by the Plan of certain leases of equipment (the Leases) from John L. Rust Co. (Rust), the Plan sponsor and a party in interest with respect to the Plan, and (2) the agreement by Rust to indemnify the Plan against any loss relating to the Leases and also to repurchase any Leases that are in default in accordance with paragraph (E) below, provided that the following conditions are met:

A. Any sale of Leases to the Plan will be on terms at least as favorable to the Plan as an arm's length transaction with an unrelated third party would be.

B. Subsequent to the date of publication of this proposed exemption, the acquisition of a Lease from Rust shall not cause the Plan to hold immediately following the acquisition (i) more than 25% of the current value (as that term is defined in section 3(26) of the Act) of Plan assets in customer notes and Leases sold by Rust or (ii) more than 10% of Plan assets in the aggregate of Leases with and customer notes of any one entity.

C. Prior to the purchase of each Lease, an independent, qualified fiduciary must determine that the purchase is appropriate and suitable for the Plan and that any Lease purchase is a fair market value transaction.

D. The independent fiduciary, on behalf of the Plan, will monitor the terms of the Leases and the exemption and take whatever action is necessary to enforce the rights of the Plan.

E. Upon default by the lessee on any payment due under a Lease, Rust has agreed to repurchase the Lease from the Plan at the payout value[7] as of the date of the default, without discount, and to indemnify the Plan for any loss suffered. The occurrence of any of the following events shall be considered events of default for purposes of this section: The lessee's failure to pay any amounts due hereunder within five days after receipt of written notice from the Plan's independent fiduciary, or the lessee's failure to pay any amounts due hereunder within 30 days after payment becomes past due, if earlier; the lessee's failure to perform any other obligation under this agreement within ten days of receipt of written notice from the Plan's independent fiduciary; abandonment of the equipment by the lessee; the lessee's cessation of business; the commencement of any proceeding in bankruptcy, receivership or insolvency or assignment for the benefit of creditors by the lessee; false representation by the lessee as to its credit or financial standing; attachment or execution levied on lessee's property; or use of the equipment by third parties without lessor's prior written consent.

F. The Plan receives adequate security for the Lease. For purposes of this exemption, the term adequate security means that the Lease is secured by a perfected security interest in the leased property which will name the Plan as the secured party.

G. Insurance against loss or damage to the leased property from fire or other hazards will be procured and maintained by the lessee and the proceeds from such insurance will be assigned to the Plan.

H. The Plan shall maintain for the duration of any Lease which is sold to the Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The Plan will continue to maintain the records for a period of six years following the expiration of the Lease or the disposition by the Plan of the Lease. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plan, during normal business hours by the Internal Revenue Service, the Department of Labor, Plan participants, any employer organization any of whose members are covered by the Plan, or any duly authorized employee or representative of the above described persons.

Temporary Nature of Exemption

Effective Date: The proposed exemption, if granted, will be effective December 30, 1985. However, the proposed exemption is temporary and, if granted, will expire five years from

[7] "Payout value" of a Lease is defined as the price that the lessee would pay at any point in time to obtain title to the leased property.

the date the exemption is granted with respect to the Plan's future purchases of Leases. The Plan may hold the Leases pursuant to the terms of the exemption subsequent to the end of the five year period.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which currently has 302 participants and assets with an approximate aggregate fair market value of $14,587,290. Rust, which does business as Rust Tractor Co. in Albuquerque, New Mexico, is in the business of selling heavy construction equipment. The Plan's trustee is Sunwest Bank of Albuquerque, N.A. (the Bank).

2. On April 3, 1985, the Department published Prohibited Transaction Class Exemption 85–68 (PTE 85–68, 50 FR 13293) which permits, under certain conditions, a plan to purchase and hold customer notes (Notes) from an employer of employees covered by the plan. The applicant represents that the Plan has acquired and held many Notes from Rust since 1985 in compliance with the terms and conditions of PTE 85–68.[8]

3. In addition, the Plan has also acquired from Rust, since December 30, 1985, approximately 76 Leases. These Leases are secured leases which were accepted by Rust in the normal course of its primary business activity as the seller of heavy construction equipment. The Leases involve equipment which is leased to third parties. The applicant represents that the Plan acquired the Leases from Rust in the belief that such transactions were also covered by PTE 85–68. The applicant has now requested retroactive relief with respect to the Plan's past acquisition of such Leases, and has also requested an exemption to permit the Plan to purchase additional Leases from Rust over a five year period.

4. The applicant represents that each of the transactions involving the Plan's acquisition of the Leases would have satisfied the conditions of PTE 85–68, but for the fact that these were Leases and not Notes. The applicant further represents that these conditions will continue to be satisfied with respect to future purchases by the Plan of Leases. The applicant specifies that the conditions of PTE 85–68 have been satisfied in the following manner:

(a) Prior to the purchase of any Lease, the transaction has been reviewed by Mr. Charles R. Seward, C.P.A., an independent certified public accountant who is the Plan's independent fiduciary with respect to this series of transactions. Mr. Seward performs no other services for either Rust or the Plan. On-going review of the performance of the customer-obligors is performed by the Bank, the Plan's independent trustee. In the event that a default in payment occurs, Rust is notified by the Bank and an immediate repurchase is effected for cash;

(b) The transactions have been on terms at least as favorable to the Plan as an arm's-length transaction with an unrelated party would be. The Plan's independent fiduciary, Mr. Seward, has represented that each transaction that he has approved for the Plan involving a Note or Lease has been in the best interests of the Plan and its participants. Mr. Seward further represents that each such transaction was for a price and on terms and conditions no less favorable to the Plan, and in many respects more favorable, than such transactions have in the past been engaged in between Rust and third party financial institutions;

(c) At no time has the value of the Notes/Leases held by the Plan approached 50% of the Plan's assets. As of December 31, 1992, the Notes/Leases represented 17.9% of the Plan's assets, and they represented 12.2% as of December 31, 1993. At no time have the Notes/Leases of any one customer exceeded 10% of the Plan's assets. With respect to Notes and Leases acquired by the Plan subsequent to the publication of this proposed exemption, the applicant represents that the value of such Notes and Leases in the aggregate will constitute no more than 25% of the total value of Plan assets.

(d) Rust has guaranteed immediate repayment of any defaulted obligation. The applicant represents that there have been defaults in only two of the 76 Leases, and Rust has repurchased both of those Leases;

(e) The Plan receives a perfected security interest in the tangible personal property purchased from Rust in return for the Note/Lease;

(f) The obligor is required to insure the collateral against fire and other hazards; and

(g) None of the terms of the Notes/Leases extends beyond the 60 month period applicable to Notes secured by heavy equipment.

5. The applicant represents that the Leases create essentially the same risk and obligations on the parties as a sale transaction, and thus pose no greater risk of loss to the Plan than in the case of the acquisition of a Note which is subject to PTE 85–68. To date the Plan has suffered no loss on any subject Lease transaction. Before entering into either a Note or Lease, Rust performs the same type of due diligence and requests the same type of financial information from the prospective purchaser/lessee. The agreements governing the transactions are very similar in that:

(a) Both transactions provide for monthly installments to pay for the use and possession of the equipment;

(b) Financing statements are filed by Rust in connection with both transactions;

(c) Upon default, Rust may accelerate the lessee/purchaser's obligations and immediately regain possession of the subject equipment;

(d) In the event of default under either transaction, Rust is entitled to its enforcement costs, including reasonable attorneys' fees;

(e) Both types of transactions contain warranty disclaimers and sell/lease the subject equipment ''AS IS WHERE IS'' with no express or implied warranties except the pass-through of the manufacturer's warranties;

(f) When either a Note or a Lease is sold to the Plan, an identical form of guarantee is executed by Rust in favor of the Plan as required by PTE 85–68. In the few transactions sold to the Plan which have gone into default, Rust has performed under its guarantees and the Plan has suffered no loss;

(g) Under New Mexico law, there is no practical difference in the rights and obligations of Rust between the subject Lease transactions and sales transactions involving Notes. The essential terms and conditions of the two types of transactions are identical.

6. In summary, the applicant represents that the proposed sales of the Leases by the Employer to the Plan meet the requirements of section 408(a) of the Act, because: (a) the sales will be limited to a five year period and will be limited to 25% of Plan assets with the condition that no more than 10% of Plan assets be invested in the Leases or Notes of any one customer; (b) the decision to purchase a Lease will be made by Mr. Seward acting as independent fiduciary for the Plan, and the customer/obligor's performance under the Lease will be monitored by the Bank acting as independent fiduciary on behalf of the Plan; (c) perfected security interests will be filed on the equipment; and (d) Rust will agree to indemnify the Plan against any loss related to the Leases and to repurchase any Leases that are in default.

For Further Information Contact: Mr. Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[8] In this proposed exemption, the Department expresses no opinion with respect to the applicability of PTE 85–68 to the Plan's acquisition and holding of such Notes.

Leavitt Group Profit Sharing and Retirement Savings Plan (the Plan)
Located in Cedar City, Utah
[Application No. D–09979]

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 (the Sale) by the Plan of certain real property (the Property) to the Cedar Development Corporation (CDC), a party in interest with respect to the Plan, provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expense from the proposed transaction; and (3) the Plan receives as consideration from the Sale the greater of either $310,000 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan within the meaning of section 3(34) of the Act and a qualified profit sharing plan under section 401(a) of the Code and includes a cash or deferred arrangement under section 401(k) of the Code. Its related trust is exempt from taxation under section 501(a) of the Code. Effective October 1, 1994, the Plan adopted an investment policy allowing all participants of the Plan to direct investments of their Plan accounts into funds selected by the administrator of the Plan.

As of October 1, 1994, the Plan had 163 participants and total assets of $5,317,000, of which approximately 5.8 percent is invested in the Property.

The Plan was established effective January 1, 1975, by Security Enterprises Limited (SEL) and has since been adopted by some 40 entities affiliated with SEL, including CDC.

The fiduciary of the Plan is Dane O. Leavitt, who is the sole shareholder of Dane O. Leavitt, Inc. that owns one-seventh of SEL. Mr. Leavitt also holds a one-seventh interest, as a shareholder, in CDC, and is the Secretary of CDC. Mr. Leavitt is also the President of Dixie Insurance Agency which is the corporate general partner of SEL.

2. SEL is a Nevada limited partnership established December 27, 1972. It is owned equally by 7 corporations of which each corporation is wholly-owned by either one shareholder or by two, who are husband and wife. The individual shareholders are all related family members. SEL is engaged primarily in owning and providing services for affiliated insurance agencies.

CDC, a Nevada corporation that is wholly-owned by the same family members who control SEL, was established on February 14, 1966, and is engaged primarily in the ownership and development of real estate. CDC is also one of the sponsoring employers of the Plan.

3. The Property consists of 517.2 acres of mountain property, with attendant water rights, that is located on an area of Southwest Utah, known as Kamarra Mountain, in Iron County. The primary use of the area is for agricultural rangeland and recreation. Over the years the Plan leased the Property to unrelated persons for grazing purposes and has not undertaken any development of the Property. The Property has not produced any significant income for the Plan. Currently it is generating approximately $1,800 per year in grazing fees from local cattlemen and wool growers. Annual property taxes paid by the Plan have averaged under $100.

The Plan acquired the Property on January 16, 1981, by warranty deed executed by Barbara S. Williams.[9] Barbara Williams was not a party in interest with respect to the Plan nor related in anyway to any of the sponsors of the Plan or their shareholders. Barbara Williams conveyed the Property to the Plan as repayment of a $194,889.39 loan on January 16, 1981, made by the Plan, which enabled Barbara Williams to redeem the Property from a foreclosure sale instituted by the State Bank of Southern Utah. The Plan used this loan of $194,889.39 as the initial value for the Property. Since 1981 the Plan expended an additional $69,200 for physical improvements to the Property, legal fees, and payment of liens to obtain clear title to the Property. Based on appraisals, the Property increased in value during the period from 1981 to 1984, and then, during the period from 1984 to 1991 decreased in value. The announcement of anticipated MX Missile sites in the area that the Property is located caused a wave of land speculation throughout southern Utah. When there was a later announcement that the MX Missile system would not be built, land values plummeted in the area of the Property. The Plan has attempted to sell the Property by contacting realtors in the area and entered into several single party listing agreements. None of the agreements resulted in any offers to purchase the Property. In the spring of 1986 and again in 1987, the Plan advertised the Property for sale in newspapers of major cities in Utah, Nevada, Arizona, and California. Several bids were received by the Plan and one was accepted; however, the proposed purchaser defaulted and the sale was not consummated. The applicant represents that it is doubtful that the Plan could sell the Property for its current appraised value of $310,000 because of the property values in the areas of the Property. Two realtors from Cedar City, Utah in letters concur with applicant's conclusion as to the improbability of selling the Property at its current appraised value.

Mr. Bradford C. Schmutz, a Certified General Appraiser, State of Utah, located in Cedar City, Utah, determined the fair market value of the Property was $310,000, as of November 30, 1994. Mr. Schmutz represented that the Property has been personally inspected by him on various dates, although not on the date of the appraisal determination, because of snow conditions. He describes the Property as having 517.2 acres, agricultural mountain grazing land with a small, old cabin and some ponds on the Property. The Property is located at an elevation from approximately 7,000 feet to 8,600 feet. The winter months with the snow pack make the area impassible except by snowmobile.

4. CDC proposes to purchase the Property from the Plan for cash for the greater of either $310,000 or the fair market value as determined by appraisal at the time of the Sale. The applicant represents that the Plan will not incur any costs associated with the proposed Sale and will suffer no loss.

The applicant represents that the proposed transaction will be in the best interests of the Plan and its participants and beneficiaries because the Plan will recover all the funds spent in acquiring and holding the Property to the date of the Sale. In addition, the applicant represents that the Plan will not continue to hold an illiquid investment which has proven difficult to sell, and the funds received from the Sale can be

[9] The Department notes that the decisions to acquire and hold the Property are governed by the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the Property.

put to better use in income producing assets at the direction of participants. This will assist the Plan in achieving its goal of having all Plan assets invested at the direction of Plan participants pursuant to the Plan's current investment policy. Furthermore, it is represented by the applicant that all costs in connection with the exemption application will be paid by the sponsor of the Plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale involves a one-time transaction for cash; (b) the Plan will not incur any expenses or losses from the Sale, (c) the Plan will receive as consideration from the Sale the greater of either $310,000 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale; (d) the Sale will permit the Plan to obtain liquid funds that can be reinvested at the direction of the participants in higher yielding and more liquid assets; and (e) the Plan will not have to risk its assets in the development of the Property.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Rollover Individual Retirement Accounts for Joseph Shepard, Located in Jacksonville, Florida; William Haspel, Located in Bethesda, Maryland; and Richard Geisendaffer, Paul Petryszak, William Kroh and Rolf Graage, Located in Baltimore, Maryland (collectively, the IRAs)

[Application Nos. D–10054–10059]

Proposed Exemption

The Department is considering granting an exemption under the authority of 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 sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the IRAs of all the common stock (the Stock) of Purchase Port Services, Inc. (PPS) held by the IRAs to PPS, provided that the following conditions are satisfied: (1) the sale of Stock by each IRA is a one-time transaction for cash; (2) no commissions or other expenses are paid by the IRAs in connection with the sale; and (3) the IRAs receive the greater of: (a) the fair market value of the Stock as determined by a qualified independent appraiser as of May 31, 1995, or (b) the fair market value of the Stock as of the time of the sale.[10]

Effective Date: If the proposed exemption is granted, the exemption will be effective July 31, 1995.

Summary of Facts and Representations

1. The IRA participants are officers, shareholders, directors and/or key employees of PPS. PPS has authorized one class of Stock, of which 30,000 shares are issued and outstanding. Approximately 72.09% of the Stock is individually owned by the shareholders whose IRAs are the subject of this proposed exemption. The remaining 27.91% of the Stock is held by the IRAs.

2. The Stock held by the IRAs was acquired in 1984 by two profit sharing plans, the GK Management, Inc. Profit Sharing Plan and the Port Management Services, Inc. Profit Sharing Plan (the Plans). The Stock ownership by the Plans resulted from self- directed investments made by the Plans' participants.

3. The Plans were terminated in 1988 because they could not satisfy the requirements of section 401(a)(26) of the Code, which became effective on January 1, 1989. Upon the termination of the Plans, the Stock of each participant under the Plans was rolled over to self-directed IRAs established for the benefit of each participant. These rollovers were made in accordance with the provisions of section 402 of the Code as then in effect.

4. Business and income tax considerations have compelled PPS to consider making an election to be taxed as a ''Subchapter S'' Corporation under section 1362(a) of the Code. However, IRAs cannot be shareholders of an ''S'' corporation. Accordingly, the applicants have requested an exemption to permit the IRAs to sell all of their shares of the Stock (8,374 in the aggregate) to PPS at their fair market value.

5. There is no established market for PPS Stock. PPS obtained an appraisal of the Stock dated May 31, 1995 from Barry Goodman, CFA, CPA, CBA, ASA, an independent business consultant and financial analyst in Washington, D.C. The applicants represent that Mr. Goodman is independent of the IRAs, their participants and PPS. Mr. Goodman has appraised the Stock as having a fair market value of $825.30 a share as of May 31, 1995.

6. The applicants have requested the exemption proposed herein to permit PPS to purchase all of the Stock held in their IRAs. PPS will pay the greater of (i) the fair market value of the PPS Stock as of May 31, 1995 as established by Mr. Goodman's appraisal, or (ii) the fair market value of the Stock as of the date of the sale. The IRAs will pay no fees, commissions or other expenses in connection with the transactions.

7. The applicants represent that presently the assets of each of the IRAs consist almost entirely of appreciated PPS Stock. Therefore, the IRAs have virtually no diversity and no liquidity. The applicants further represent that, as a practical matter, the only potential purchasers of the Stock at full fair market value are the IRA participants and PPS, with the effect that the IRAs would have great difficulty disposing of the Stock in a transaction at full value that did not involve a sale to disqualified persons. The IRA participants have attained, or will shortly attain, age 59½; therefore, it will be appropriate for the IRAs to commence distribution to their participants in the near term. Thus, the applicants represent that the proposed exemption will be in the interest of the IRA participants and their beneficiaries because it would make the IRAs liquid, provide diversity, maximize the value of the PPS Stock held by the IRAs, and permit cash distributions to the IRA participants (and/or to their beneficiaries) when such distributions are appropriate and/or required by the Code.

8. In summary, the applicants represent that the proposed transactions satisfy the criteria contained in section 4975(c)(2) of the Code because: (a) the proposed sales will be one-time transactions for cash; (b) no commissions or other expenses will be paid by the IRAs in connection with the sales; (c) the IRAs will be receiving not less than the fair market value of the Stock as determined by a qualified, independent expert; and (d) each of the IRA participants is the only participant in his IRA, and each has determined that the proposed transaction is appropriate for and in the best interest of his IRA and desires that the transaction be consummated with respect to his IRA.

Notice to Interested Persons: Because each of the IRA participants is the only participant in his own IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Federal Register**.

For Further Information Contact: Gary H. Lefkowitz of the Department,

[10] 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.

telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 18th day of July 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–17961 Filed 7–20–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–61; Exemption Application No. L–09933, et al.]

Grant of Individual Exemptions; United Food and Commercial Workers Union, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

United Food and Commercial Workers Union Local 789 and St. Paul Food Employers Health Care Plan (the Plan) Located in Bloomington, Minnesota

[Prohibited Transaction Exemption 95–61; Exemption Application No. L–09933]

Exemption

The restrictions of section 406(a) of the Act shall not apply to the purchase of prescription drugs, at discount prices, by Plan participants and beneficiaries, from Supervalu Pharmacies, Inc. (SPI) and Cub Foods (Cub), parties in interest with respect to the Plan, provided the following conditions are satisfied: (a) the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party; (b) any decision by the Plan to enter into agreements governing the subject purchases will be made by Plan fiduciaries independent of SPI and Cub; and (c) at least 50% of the preferred providers participating in the Preferred Pharmacy Network (PPN) which will be selling prescription drugs to the Plan's participants and beneficiaries will be unrelated to SPI and Cub.

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 May 22, 1995 at 60 FR 27127.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Motors Hourly-Rate Employes' Pension Plan (the GM Hourly Plan); The General Motors Retirement Program for Salaried Employees (the GM Salaried Plan); The Saturn Individual Retirement Plan for Represented Team Members; The Saturn Personal Choices Retirement Plan for Non-Represented Team Members; and The Employees' Retirement Plan for GMAC Corporation (all five plans collectively, the GM Plans); The AT&T Pension Plan; and the AT&T Management Pension Plan (together, the AT&T Plans; all seven plans collectively, the Plans) Located in Detroit, Michigan (the GM Plans), and in New York, New York (the AT&T Plans)

[Prohibited Transaction Exemption 95–62; Exemption Application Nos. D–09964 through D–09968]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the granting to The Industrial Bank of Japan, Limited, New York Branch (IBJ), as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in The Morgan Stanley Real Estate Fund II, L.P. (the Partnership) owned by the Plans with respect to which some of the Lenders are parties in interest; and (2) the agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ.

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 May 22, 1995 at 60 FR 27129.

Written Comments: The Department received one written comment with respect to the proposed exemption, which was submitted by the applicants to correct two errors in the proposed exemption. The Partnership Agreement referred to in Representation #1 of the proposed exemption was dated December 19, 1994, rather than December 29, 1994, as the applicants had originally represented. The applicants also noted that the word ''Employes'' in the names of the GM Hourly Plan and the GM Salaried Plan should have only one ''e'' due to a historical quirk. The Department has made the appropriate corrections and determined to grant the exemption as it was proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Eaton Corporation Share Purchase and Investment Plan (the Plan) Located in Cleveland, Ohio

[Prohibited Transaction Exemption 95–63; Exemption Application No. D–09978]

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: (1) The extension of credit by Eaton Corporation (Eaton) to the Plan in the form of loans (the Loans) with respect to certain guaranteed investment contracts (collectively, the GICs); and (2) the repayment (the Repayments) by the Plan of all or a portion of amounts advanced to the Plan by Eaton on the terms described in the agreement governing such Loans, provided: (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties; (b) no interest or other expenses will be incurred by the Plan in connection with the Loans; (c) the Loans would be made only when, and to the extent needed, to avoid penalties that would otherwise be incurred if the liquidation of one or more of the GICs is required, as determined by the Corporate Compensation Committee (the Plan Committee); (d) Repayments will be made only from payments made to the Plan as the GICs mature (the GIC Proceeds); (e) the Repayments will not exceed the total amount of the Loans; and (f) the Repayments will be waived to the extent that the Loans exceed the GIC Proceeds.

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 May 22, 1995 at 60 FR 27130.

EFFECTIVE DATE: This exemption is effective July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz 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 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, D.C., this 18th day of July, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–17960 Filed 7–20–95; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Grant Award for the Provision of Civil Legal Services to Hawaii Migrant Farmworkers

AGENCY: Legal Services Corporation.

ACTION: Announcement of intent to award grant.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award a regular annualized grant to Legal Aid

Society of Hawaii for the purpose of providing effective, efficient, and high quality civil legal services to the LSC-eligible migrant population in the state of Hawaii. The Corporation plans to award a grant in the amount of $38,748.

This grant is being made pursuant to authority conferred by Section 1006(a)(1)(B) and 1006(a)(3)of the LSC Act of 1974, as amended.

This public notice is issued pursuant to Section 1007(f) of the LSC Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. This grant award will not become effective, and grant funds will not be distributed prior to the expiration of this 30-day public comment period.

DATES: All comments and recommendations must be received by 5:00 p.m. on or before August 21, 1995.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street N.E., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Merceria L. Ludgood, Director, Office of Program Services, (202) 336–8800.

Date Issued: July 17, 1995.

Merceria L. Ludgood,

Director, Office of Program Services.

[FR Doc. 95–18033 Filed 7–20–95; 8:45 am]

BILLING CODE 7050–01–P

Grant Award for Legal Services State Support in the District of Columbia, the Virgin Islands, the Territory of Guam, and the Republic of the Marshall Islands, the Federated States of Micronesia, The Republic of Palau, and the Commonwealth of the Northern Mariana Islands

AGENCY: Legal Services Corporation.

ACTION: Announcement of intent to award grants.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award four (4) annualized grants for the purpose of providing state support functions in its respective service area. The Corporation plans to award a total of $96,132 to the following LSC recipients:

Name	State/territory	Amount
Neighborhood Legal Services Program of the District of Columbia	DC	$46,932
Legal Services of the Virgin Islands, Inc.	VI	13,005
Guam Legal Services Corporation	GU	5,079
Micronesian Legal Services Corporation	MP	31,116

These grants are being made pursuant to authority conferred by Section 1006(a)(1)(B) and 1006(a)(3) of the LSC Act of 1974, as amended.

This public notice is issued pursuant to Section 1007(f) of the LSC Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. These grant awards will not become effective, and grant funds will not be distributed, prior to the expiration of this 30 day public comment period.

DATES: All comments and recommendations must be received by 5:00 p.m. on or before August 12, 1995.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street N.E., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Merceria L. Ludgood, Director, Office of Program Services, (202) 336–8800.

Date Issued: July 17, 1995.

Merceria L. Ludgood,

Director, Office of Program Services.

[FR Doc. 95–18032 Filed 7–20–95; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

In the Matter of: Nebraska Public Power District (Cooper Nuclear Station); Exemption

I

Nebraska Public Power District (the licensee) is the holder of Facility Operating License No. DPR–46, which authorizes operation of the Cooper Nuclear Station (CNS) at power levels not in excess of 2381 megawatts thermal. The facility consists of a boiling water reactor at the licensee's site in Nemaha County, Nebraska. The operating license provides, among other things, that CNS is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water-cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment.

Section III.D.2(a) of Appendix J to 10 CFR Part 50 requires that Type B leak rate tests, except for airlocks, be performed during reactor shutdown for refueling, or at other convenient intervals, but in no case at intervals greater than two years. Type B tests are intended to detect local leaks and to measure leakage across each pressure-containing or leakage-limiting boundary for certain reactor containment penetrations.

NRC regulations in 10 CFR 50.12(a) provide for specific exemptions from the requirements of the regulations in Part 50 if: (1) the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; and, (2) special circumstances are present. The regulations in 10 CFR 50.12(a)(2)(ii) provide that special circumstances are present where application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III

By letter dated December 27, 1994, the licensee requested a one-time exemption from the requirements of Appendix J, Section III.D.2(a) of the drywell head and manport penetrations. The requested exemption for an extension of the 2-year surveillance interval would allow these penetrations to be tested at the next refueling outage,

scheduled to commence on October 13, 1995. The current 2-year interval ends on July 17, 1995, when the plant is expected to be at power. The current operating cycle for the CNS commenced on August 1, 1993, and has included an extended, unplanned outage of nearly nine months (May 25, 1994, through February 21, 1995). This factor, along with the anticipated load demand and fuel capacity, have resulted in the rescheduling of the next refueling outage to October 1995.

During the unplanned outage, the licensee evaluated the schedule for performing the required Type B and C local leak rate tests (LLRTs) to ensure that all of these tests would be performed within the Technical Specification and 10 CFR part 50, Appendix J 2-year maximum surveillance interval. As a result of this evaluation, the licensee determined that only two LLRTs would come due when anticipated plant conditions could prohibit performance of the test. These are the Type B LLRTs required for both the drywell head and manport (penetrations DWH and X–4 respectively), which are currently due July 17, 1995. During reactor power operation, the extreme radiation environment prohibits personnel from performing the subject LLRTs or any of the activities (removal and replacement of the shield blocks on the refueling floor) associated with these tests. The subject LLRTs are normally performed during refueling outages. Therefore, the licensee would have to initiate a reactor shutdown solely for the purpose of conducting the subject Type B tests in order to comply with the current schedular requirement.

The licensee provided additional information to support the requested exemption and to address the requirements of 10 CFR 50.12, ''Specific Exemptions.'' With respect to the requirements of 10 CFR 50.12(a)(1), the licensee states that the exemption will not present an undue risk to the public health and safety based on the following reasons:

The drywell head and manport (X–4) have never failed an as found LLRT.

The drywell head seal is made from a 45 ± 5 durometer silicone rubber compound. Environmental conditions such as heat and radiation cause degradation in silicone compounds. It is reasonable to conclude that less degradation can be expected due to the extended shutdown and subsequent lower temperature and radiation levels experienced by the seals.

The drywell head and manport penetrations are not active components, and therefore, are not subject to active failure criteria.

With respect to the requirements of 10 CFR 50.12(a)(2)(ii), the licensee states that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule. The licensee indicates that the rule states that testing be conducted during reactor shutdown for refueling or other convenient intervals. The extend forced outage was not a convenient interval for performing the two Type B tests, as it was not a scheduled refueling outage and the significant effort in preparing for and performing the tests normally done in concert with other refueling activities was not planned for. The licensee also states that the intent of the regulation is to assure performance of LLRTs after every two years of full power operation, and that, due to the extended forced outage, CNS will not have operated at full power for two years between the performance of the LLRTs. Therefore, the licensee maintains that the time extension for performing the tests does not conflict with the intent of the regulation.

The NRC staff has evaluated the licensee's exemption request and has determined that the licensee has provided adequate technical justification for the requested exemption and has demonstrated that special circumstances exist, in accordance with 10 CFR 50.12(a)(2). Specifically, the two subject penetrations have never failed their Type B tests since CNS commenced commercial operation in 1974; therefore there is a high degree of confidence in the leak tight integrity of those penetrations. Based on the licensee's schedule, the requested exemption would allow continued power operation without leak testing the penetrations for less than three months until the plant is shut down for refueling; in the cold shutdown condition, primary containment integrity is not required. The subject tests would then be performed prior to startup from the refueling outage. Based on the test history of these penetrations and the brief period of operation anticipated before shutdown, the staff concludes that the exemption request is justified.

In addition, the staff concludes that the licensee has demonstrated that special circumstances exist in accordance with 10 CFR 50.12(a)(2)(ii). Application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of conducting Type B tests is to detect local leaks and to measure leakage across each pressure-containing or leakage-limiting boundary for certain reactor containment penetrations. Type B tests on the subject penetrations will be performed in successive refueling outages not significantly beyond the 2-year interval and a convenient opportunity to conduct the testing was not otherwise available.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest and that the special circumstances required by 10 CFR 50.12(a)(2) are present. An exemption is hereby granted from the requirement of Section III.D.2(a) of Appendix J to 10 CFR Part 50, which requires that Type B tests be performed during each reactor shutdown for refueling but in no case at intervals greater than two years, for the drywell head and manport (penetrations DWH and X–4 respectively) at the CNS. The exemption allows a one-time extension for the Type B testing of these penetrations from July 17, 1995, until the next refueling outage, scheduled to commence on October 13, 1995.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (60 FR 36312). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of July 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17996 Filed 7–20–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. STN 50–456]

In the Matter: Commonwealth Edison Company (Braidwood Station, Unit 1); Exemption

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility operating License No. NPF–72, which authorizes operation of Braidwood Station, Unit 1. The facility is a pressurized water reactor located at the licensee's site in Will County, Illinois. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

In 10 CFR 50.60, ''Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for

Normal Operation,'' it states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. In 10 CFR 50.60(b) it specifies that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure-relieving devices called Power-Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. Braidwood, Unit 1, is expected to exceed the 5.37 effective full power years on August 2, 1995; therefore, operating with the current LTOP limits may result in encroachment of the P/T limit curves of the reactor vessel during normal operation of the plant after August 2, 1995.

The licensee proposed that in determining the design setpoint for LTOP events for Braidwood Unit 1, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins currently required by 10 CFR Part 50, Appendix G. The proposed alternate methodology, Code Case N–514, is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514, ''Low Temperature Overpressure Protection,'' has been approved by the ASME Code Committee. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. The NRC staff is revising 10 CFR 50.55a, which will endorse the 1993 Addenda and Appendix G of Section XI into the regulations.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for the LTOP setpoint. By application dated November 30, 1994, as supplemented on May 11, 1995, the licensee requested an exemption from 10 CFR 50.60 for this purpose.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon is own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *.

The underlying purpose of 10 CFR Part 50, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this Appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Braidwood reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements.

Using the licensee's proposed safety factors instead of Appendix G safety factors to calculate the LTOP setpoint will permit a higher LTOP setpoint than would otherwise be required and will provide added margin to prevent normal operating surges from lifting the PORVs or cavitating the reactor coolant pumps.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to pubic health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption is authorized by law, will not endanger life or property or common defense and

security, and is, otherwise, in the public interest. Therefore, The Commission hereby grants Commonwealth Edison Company an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant impact on the human environment (60 FR 35570).

Dated at Rockville, Maryland, this 13th day of July 1995.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17976 Filed 7–20–95; 8:45 am]

BILLING CODE 7590–01–M

Proposed Generic Communication Testing of Safety-Related Logic Circuits; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed generic communication: Extension of comment period.

SUMMARY: On May 22, 1995, (60 FR 27141), the NRC published for public comment a proposed generic letter which discusses problems with the testing of safety-related logic circuits and requests addressees to review surveillance procedures to determine whether any of the procedures fail to test all required portions of the logic circuitry and, if any problems are found, to correct the problems. The comment period for this proposed generic letter was to have expired on July 21, 1995. In a letter dated July 6, 1995, the Nuclear Energy Institute requested a 30-day extension of the comment period to allow the industry to prepare more comprehensive and detailed comments with respect to the proposed generic letter provisions and impact. In response to this request, the NRC has decided to extend the comment period 30 days.

DATES: The comment period has been extended and now expires August 21, 1995. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules Review and Directives Branch. U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hukam Garg, (301) 415–2929.

Dated at Rockville, Maryland, this 12th day of July 1995.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–17975 Filed 7–20–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Entity and Display Concepts Statement

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of the second Statement of Federal Financial Accounting Concepts, ''Entity and Display,'' adopted by the Office of Management and Budget (OMB). The concept statement was recommended by the Federal Accounting Standards Advisory Board and adopted in its entirety by OMB.

ADDRESSES: Copies of the Statement of Federal Financial Accounting Concepts No. 2, ''Entity and Display,'' may be obtained for $3.75 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202–783–3238), Stock No. 041–001–00456–1.

FOR FURTHER INFORMATION CONTACT: Ronald Longo (telephone: 202–395–3993), Office of Federal Financial Management, Office of Management and Budget, 725–17th Street, N.W.—Room 6025, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: This Notice indicates the availability of the second Statement of Federal Financial Accounting Concepts, ''Entity and Display.'' The concept statement was recommended by the Federal Accounting Standards Advisory Board (FASAB) in April 1995, and adopted in its entirety by the Office of Management and Budget (OMB).

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, they are to be published in the **Federal Register** and distributed throughout the Federal Government.

G. Edward DeSeve,

Controller.

[FR Doc. 95–18043 Filed 7–20–95; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Clearance of a Revised Information Collection Form SF 3104 and SF 3104B

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for a clearance of a revised information collection. SF 3104, Application for Death Benefits/ Federal Employees Retirement System, is used to apply for benefits under the Federal Employees Retirement System based on the death of an employee, former employee or retiree who was covered by FERS at the time of his/her death or separation from Federal Service. SF 3104B, Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death, is used by applicants for death benefits under FERS if the deceased was a Federal Employee at the time of death.

Approximately 4,054 SF 3104s are completed annually. We estimate that it takes 60 minutes to fill out the form. The annual burden is 4,054 hours. Approximately 2,920 SF 3104Bs are completed annually. We estimate that it takes 60 minutes to fill out the form. The annual burden is 2,920 hours. The combined total annual burden is 6,974 hours.

For copies of this proposal, contact Doris R. Benz on (703) 908–8564.

DATES: Comments on this proposal should be received by August 20, 1995.

ADDRESSES: Send or deliver comments to—

Daniel A. Green, Retirement and Insurance Service, FERS Division,

U.S. Office of Personnel Management, 1900 E Street, NW., Room 4429, Washington, DC 20415
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Team Leader, Forms Analysis and Design, (202) 606–0623.

U.S. Office of Personnel Management

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–17962 Filed 7–20–95; 8:45 am]

BILLING CODE 6325–01–M

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Notice of Open Meetings

SUMMARY: Under the provisions of the Federal Advisory Committee Act, this notice is hereby given to announce an open meeting concerning the Presidential Advisory Committee on Gulf War Veterans' Illnesses.

DATES: August 14, 1995, 9:30 a.m.–5 p.m.; August 15, 1995, 9 a.m.–3 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas C. McDaniels, Jr., Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 2005, telephone 202–761–0066, fax: 202–761–0310.

PLACE: The Capital Hilton, 16th and K Street NW., Washington, DC 20036.

SUPPLEMENTARY INFORMATION: The Presidential Advisory Committee on Gulf War Veterans' Illnesses was established by the President, Executive Order 12961, May 26, 1995, to review and provide recommendations on the full range of government activities relating to Gulf War veterans' illnesses. The Presidential Advisory Committee on Gulf War Veterans' Illnesses reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs.

Tentative Agenda

Monday, August 14, 1995

9:30 a.m. Call to Order and Opening Remarks
10 a.m. Briefing, Department of Defense, Department of Health and Human Services, and Department of Veterans Affairs
12:30 p.m. Lunch
1:45 p.m. Public Comment
3:15 p.m. Break
3:30 p.m. Public Comment
5 p.m. Meeting Adjourned

Tuesday, August 15, 1995

9 a.m. Opening Remarks
9:15 a.m. Briefing, Institute of Medicine Committee to Review the Health Consequences of Services During the Persian Gulf War and Comprehensive Clinical Evaluation Program Committee
10:15 a.m. Discussion of Advisory Committee Goals/Objectives/Strategies
12:15 p.m. Lunch
1:30 p.m. Discussion of Advisory Committee Goals/Objectives/Strategies (continued)
2:30 p.m. Future Meeting(s)
3 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. The Advisory Committee Chair 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 Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business 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 offices of the Advisory Committee at the address listed above between 9:30 a.m.–4 p.m., Monday through Friday, except Federal holidays.

Dated: July 18, 1995.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–18076 Filed 7–20–95; 8:45 am]

BILLING CODE 5000–04–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (R.G. Barry Corporation, Common Stock, $1.00 Par Value) File No. 1–8769

July 17, 1995.

R.G. Barry Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. (''NYSE''). The Security commenced trading on the NYSE at the opening of business on July 6, 1995 and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant with maintaining the dual listing of the Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before August 8, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–17942 Filed 7–20–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26333]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 14, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 7, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Co., et al. (70–8599)

Consolidated Natural Gas Company (''Consolidated''), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, and its wholly owned subsidiary, Consolidated System LNG Company (''Consolidated LNG''), CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, have filed a declaration under section 12(c) of the Act and rule 42 thereunder.

Consolidated LNG, which for all practical purposes is a defunct company, proposes to buy back (at par) shares of its common stock, $10,000 par value per share, from time to time through December 31, 2000, from Consolidated to effect a return of capital to the parent.

Consolidated LNG has not made the standard payout of 100% of its liquid cash assets to Consolidated since 1988. A dividend of $2,502,000 was declared on December 15, 1994 and paid on February 15, 1995, leaving $304,000 in retained earnings as of that date. Consolidated LNG proposes an initial return of capital to its parent of approximately $48,824,000, of which $48,520,000 will come from the stock buy-back, and $304,000 will be out of retained earnings. When combined with the 1994 dividend of $2,502,000, the proposed transaction will achieve an approximate 100% payout of liquid cash assets to Consolidated. Future liquid cash assets will be paid by dividends out of retained earnings and additional stock buy-backs.

Central Ohio Coal Co., et al. (70–8639)

Central Ohio Coal Company, Southern Ohio Coal, and Windsor Coal Company, all of 1 Riverside Plaza, Columbus, Ohio 43215 (''Companies''), all subsidiary companies of Ohio Power Company (''Ohio Power''), an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, have filed an application pursuant to sections 9 and 10 of the Act.

The Companies propose to sell coal to non-associate companies through December 31, 2000. The Companies would sell the coal at a price in excess of the incremental cost to produce it and for the greatest amount practicable for coal produced from their mines within the competitive market, but in no case less than the incremental variable costs, including all fees, associated with the production of such coal. The Companies intend to utilize existing equipment and current employees to produce this coal.

The revenues from sales of coal to non-associates will be credited to the costs of mining operations and will help reduce the price of coal sold to Ohio Power.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17941 Filed 7–20–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35971; File No. SR–DTC–95–11]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Modifications to the Prime Broker Option in the Institutional Delivery System

July 14, 1995

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 26, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the existing procedures for the prime broker option in DTC's Institutional Delivery (''ID'') system.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In a previous filing with the Commission, DTC set forth procedures for the prime broker option in the ID system, including procedures for the disaffirmation of a trade which had previously been affirmed by the prime broker.[4] In that filing DTC stated that

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The text of the modifications to the ID procedures is attached as an exhibit to this Notice.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] Securities Exchange Act Release No. 34779 (October 3, 1994), 59 FR 51465 [File No. SR–DTC–94–13] (notice of filing and order granting

prior to the change to three business days as the standard settlement period (''T+3'') in 1995,[5] DTC would develop a more automated mechanism for disaffirmation of trades by a prime broker. The purpose of this proposed rule change is to implement a more automated mechanism for disaffirmation by a prime broker and to clarify how an executing broker specifies settlement locations for trades.

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. DTC believes its proposed rule change meets the requirements of the Act because the rule change will contribute to the automation of trade processing in the ID system and therefore will promote the prompt and accurate clearance and settlement of securities transactions. DTC also states that the enhancements to its ID system will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[7] of the Act and Rule 19b–4(e)(4)[8] thereunder because the rule change effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and it does not significantly affect the respective rights or obligations of DTC or persons using the prime broker option in the ID system. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–95–11 and should be submitted by August 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

Procedures for the Prime Broker Option in the ID System

Confirmation/affirmation

Executing Brokers can use the ID system to confirm to Prime Brokers trades done with mutual clients for securities which are eligible for settlement in NSCC's Continuous Net Settlement (CNS) system, in DTC's trade-for-trade (PDQ) system, or elsewhere when the trades are to be settled by a Prime Broker (i.e. a Broker-Dealer that provides a clearing facility for certain customers).

The ID system determines settlement based on the Prime Broker Agent ID number which is stored in the ID Masterfile, as well as from the ''Settlement Location'' field specified in the trade input record. For CNS trades, DTC delivers the trade details of all trades affirmed between noon the prior day and noon the current day to NSCC each afternoon for CNS settlement.

Prime Brokers are required to maintain two or more Agent ID numbers. One Agent ID number must be reserved as a special number which the Executing Broker specifies on trade input to confirm a prime broker trade. The Executing Broker determines the settlement option based on a settlement location of DTC (CNS or PDQ) or any other settlement location (trades settling away from NSCC or DTC). If DTC settlement location is specified, the ID system determines CNS or PDQ depending on eligibility, and the transaction is processed in accordance with the existing Procedures as described within the ID Manual. Provided the security identifier (CUSIP) is CNS eligible, the trade is delivered to NSCC for settlement. Otherwise, if the security is DTC eligible, it is processed for PDQ settlement.

Disaffirmation

Prime Brokers have the option, under certain circumstances, to reverse an affirmed confirmation back to an unaffirmed confirmation status. To exercise that option, the Prime Broker can use the disaffirmation function of the ID system to cause all affirmed trades for that client to be reversed to the confirmation status, thus preventing them from settling within CNS or PDQ processing. Prime broker trades settling outside CNS or PDQ may likewise be disaffirmed, but the Prime and Executing Brokers must cancel settlement instructions outside of ID.

Only Prime Brokers have access to the IDPB disaffirmation function in the ID system via PTS terminals. In the event that disaffirmation becomes necessary, the Prime Broker can use the IDPB function to enter the DTC control numbers of those trades to be disaffirmed. The Prime Broker will not affirm any trades which have been reported in the ID system subsequent to the Prime Broker's decision to terminate its relationship with the client.

For affirmed trades destined for CNS settlement, one of two situations may apply. If affirmation and disaffirmation both occur within the same noon to noon cycle, the ID system reverses the status of the affirmed confirmation to confirmation (unaffirmed) and does not deliver the trade details to NSCC. Otherwise, the ID system delivers a reversal of the trade details to NSCC.

Once entered into ID by the Prime Broker, disaffirmations are reported to the Executing Brokers with a special PTS disaffirmation ticket. In addition, the Prime Broker should contact DTC's ID Support unit by telephone to alert DTC to the disaffirmation event. DTC will, on a best efforts basis, contact the Executing Brokers by telephone to alert them to the disaffirmation and the existence of the special tickets on their PTS printers.

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accelerated approval on a temporary basis of proposed rule change implementing the prime broker option in the ID system).

[5] 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.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[8] 17 CFR 240.19b–4(e)(4) (1994).

[9] 17 CFR 200.30–3(a)(12) (1994).

Note: DTC has no responsibility to ascertain that (i) a prime brokerage agreement is in effect between the Prime Broker and the Executing Broker which are identified in any instruction submitted to DTC or (ii) an instruction submitted to DTC by the Prime Broker or by the Executing Broker is in accordance with the provisions of any such prime brokerage agreement.

[FR Doc. 95–17939 Filed 7–20–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35970; International Securities Release No. 828; File No. SR–ISCC–95–03]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Change Relating to Modification of the Calculation of Its Clearing Fund Formula

July 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 5, 1995, the International Securities Clearing Corporation (''ISCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–ISCC–95–03) as described in Items I and II below, which items have been prepared primarily by ISCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change through August 1, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

ISCC proposes to modify some of the factors used in the calculation of its clearing fund formula. The modification is being made to accommodate the five day rolling settlement cycle recently instituted by the London Stock Exchange (''LSE'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On June 26, 1995, the LSE moved from a ten day rolling settlement period to a five day rolling settlement period.[3] In response to this change in the standard settlement cycle, ISCC is adjusting its method of calculating its clearing fund requirements.[4] ISCC's clearing fund formula requires ISCC members to deposit an amount based upon the following weekly calculation: (Gross Debit Value) × (Market Risk Factor) + (Foreign Exchange Factor). Under the proposal, ISCC is not modifying its clearing fund formula but is modifying the calculations used to derive factors used in the clearing fund formula. ISCC is modifying the calculation of the Gross Debit Value and Market Risk Factor because the determination of these factors relies in part upon the applicable settlement period. ISCC also is adding to its clearing fund formula procedures a requirement that each member must deposit the greater of (a) the largest clearing fund deposit requirement imposed over the previous fifty-two week period or (b) the current weekly calculated clearing fund requirement.[5]

The Gross Debit Value currently is the largest single daily gross debit value, based on debit values for the calendar week following the week in which the calculation is performed,[6] less 15% of the Institutional Net Settlement (''INS'') receive value for that same day.[7] Under a five day settlement standard, it is no longer feasible for ISCC to calculate the required deposit using the existing formula because at the time of the calculation ISCC only will know of the trades settling on one day of the following week.[8] Accordingly, ISCC will now base the Gross Debit Value on the largest single daily gross debit value, based on debit values for five consecutive business days including the day on which the calculation is performed, less 15% of the INS receive value for that day.

The five day settlement standard also requires modification to the Market Risk Factor component of the formula. The formula currently uses a Market Risk Factor based on the largest calculated percentage change in the Financial Times Index over an eleven day period over a minimum of 365 days. This calculation was based on the premise that there could be eleven days from the day a member executed a trade until ISCC liquidated the position.[9] Applying the same reasoning to the five day settlement environment, the Market

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by ISCC.

[3] In 1986, ISCC and the LSE entered into a linkage agreement which allows ISCC to obtain comparison and settlement services in the United Kingdom from the LSE on behalf of ISCC members. Pursuant to this linkage agreement, ISCC is responsible for paying for all securities delivered. ISCC has no requirement to complete open pending trades. On July 18, 1994, the LSE moved to a ten day rolling settlement cycle with trades settling ten days after trade date. Previously, the LSE settled trades on a fortnightly basis with all trades that occurred during a two-week period settling on the same day. In response to the change to a rolling settlement cycle, ISCCA adjusted its method of calculating its clearing fund requirements. Securities Exchange Act Release Act Release No. 34392, International Series Release No. 687 (July 15, 1994), 50 FE 37798.

[4] When ISCC amended its clearing fund formula rule last year to accommodate the change from a fortnightly system to a ten day rolling settlement system, the rule filing was approved on a temporary basis until July 18, 1995. Securities Exchange Act Release No. 34392, International Series Release No. 687 (July 15, 1995), 59 FR 37798. ISCC cannot request an extension of the approval because the current formula is not appropriate for a five day settling system. ISCC therefore is seeking approval of the proposed change on an expedited basis.

[5] Members will continue to be required to contribute a minimum of $50,000 to the clearing fund.

[6] Currently, ISCC calculates the Gross Debit Value each Tuesday.

[7] Under the INS system, redeliveries of securities from ISCC members to institutional participants can occur automatically through the LSE. Therefore, ISCC generally is not required to pay the LSE for these securities. The debits arising from these redeliveries may be offset only partially because these securities may be reclaimed (*i.e.*, returned) by the receiver, and in such circumstance, ISCC is liable to the LSE for the full value of the reclamation.

[8] ISCC calculates and collects the required deposit on a weekly basis. If ISCC calculates a member's clearing fund requirement on Tuesday, August 2, only the settlements for trades conducted on Monday, August 1, and settling on Monday, August 8, will be available for consideration. An ISCC member has three business days after notice of an increase in its clearing fund contribution to pay such increase. Under the prior ten day rolling settlement system, the clearing fund formula was based on the actual largest daily obligation of a member during the relevant time period, and the clearing fund deposit could be calculated and collected prior to the settlement day. However, under the five day rolling settlement cycle, because an ISCC member has three business days after the calculation to make additional deposits, ISCC will be calculating and collecting clearing fund contributions generally based on the prior week's trades which already have settled.

[9] ISCC bases its clearing fund calculations on the assumption that it will take one day to sell all of a defaulting participant's positions. Under a ten day settlement period, this resulted in an eleven day exposure for market risk with ten days between trade date and settlement date and one day between settlement date and close out of positions. There also is a one day exposure for foreign exchange risk because ISCC converts U.S. dollars to British pounds on the settlement date and converts the proceeds from the sale of the positions to U.S. dollars the following day.

Risk Factor is being amended to reflect that it will be based on the largest percentage change in the Financial Times Index over a six day period over a minimum of 365 days. Initially, the Market Risk Factor will continue to be set at 7%.

No change is required to be made to the formula used to derive the Foreign Exchange Factor. This factor is based in part on the Estimated Foreign Exchange Volatility, an amount that is equal to the largest one day percentage change in the U.S. dollar/British pound foreign exchange rate over a minimum of 365 days and that is unaffected by the change in the standard settlement period.[10] The Estimated Foreign Exchange Volatility will continue to be set at 4%.[11]

ISCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate ISCC's ability to safeguard securities and funds in its custody or control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule changes will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

ISCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[12] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that ISCC's proposal to amend certain factors used in its clearing fund formula should enhance the safeguarding of securities and funds which are in the custody or control of ISCC or for which it is responsible because the modifications will result in a more feasible means of determining ISCC's risks under the shorter standard settlement cycle. Because of the effect of a five day settlement cycle on the calculation of the clearing fund requirements, the proposal will enable ISCC to require members to deposit the greater of (a) the current calculation amount or (b) the largest calculation amount over the prior fifty-two weeks. Collection of the larger amount for deposit to the clearing fund should provide additional protection to compensate for the change in the calculations of the Gross Debit Value and Market Risk Factor which generally will be based upon previously settled trades rather than outstanding obligations.

On June 17, 1980, the Commission issued a release announcing the standards to be used by the Division of Market Regulation in connection with the registration of clearing agencies.[13] In that release, the Commission stated that it is appropriate for a clearing agency to establish an appropriate level of clearing fund contributions based, among other things, on its assessment of the risks to which it is subject. In addition, contributions to the clearing fund should be based on a formula that applies to users on a uniform, nondiscriminatory basis. The Commission believes that ISCC's proposal is consistent with these guidelines.[14] The clearing fund formula continues to be based upon the risk factors created by LSE's method of settlement (*i.e.*, time, market, and foreign exchange risks). Furthermore, ISCC's proposed changes do not alter the uniform application of the clearing fund formula to all ISCC members in accordance with their usage of the LSE link established by the linkage agreement between ISCC and LSE.[15]

ISCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because (i) approval of the current clearing fund formula will expire on July 18, 1995, (ii) the LSE already has implemented the five day rolling settlement system, and (iii) application of an amended clearing fund formula is critical to the clearance and settlement of transactions under the shorter T+5 settlement time frame.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of ISCC. All submissions should refer to the file number SR–ISCC–95–03 and should be submitted by August 11, 1995.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–ISCC–95–03) be, and hereby is, temporarily approved through August 1, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17940 Filed 7–20–95; 8:45 am]

BILLING CODE 8010–01–M

[10] The Foreign Exchange Factor is the product of the Gross Debit Value and the Estimated Foreign Exchange Volatility less the product of the Gross Debit Value times the Market Risk Factor times the Estimated Foreign Exchange Volatility.

[11] During the period from 1989 to 1992, the maximum fluctuation in the U.S. Dollar-British Pound exchange rate was 4.445%. ISCC will continue to review annually the foreign exchange risk factor.

[12] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[13] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

[14] ISCC has agreed that prior to the expiration of this order it will report to the Commission the average level of clearing fund deposits for each participant under the ten day settlement cycle and the five day settlement cycle. In addition, ISCC has agreed to report to the Commission how frequently it required each participant to deposit the largest clearing fund deposit over the prior fifty-two weeks rather than the current calculation amount.

[15] The linkage agreement between ISCC and LSE, dated December 22, 1988, allows ISCC to obtain comparison and settlement services in the United Kingdom from the LSE on behalf of ISCC members.

[16] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–35977; File No. SR–MBS–95–03]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying MBS Clearing Corporation's Schedule of Charges for Hardcopy Output of Reports

July 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 5, 1995, the MBS Clearing Corporation (''MBS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MBS–95–03) as described in Items I, II, and III below, which Items have been prepared primarily by MBS. 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 proposed rule change modifies MBS's Schedule of Charges for hardcopy output of reports.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBS included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBS has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify MBS's Schedule of Charges for hardcopy output of reports. MBS currently charges its participants $.10 per page for requests for hardcopy output of reports from microfiche and the Securities Industry Automation Corporation (''SIAC''). The proposed rule change increases MBS's fee for requests for hardcopy output from microfiche from $.10 per page to $1.00 per page. The new fee more accurately reflects the costs incurred by MBS to provide hardcopy output from microfiche. The fee for hardcopy output from SIAC, however, will remain unchanged at $.10 per page.

MBS believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[3] and the rules and regulations thereunder in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statements on Burden on Competition

MBS does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBS will notify the Commission of any written comments received by MBS.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and pursuant to Rule 19b–4(e)(2) promulgated thereunder[5] because the proposed rule change establishes a due, fee, or other charge imposed by MBS. At any time within sixty days of the filing of such rile change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the pubic interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to File No. SR–MBS–95–03 and should be submitted by August 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17994 Filed 7–20–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35978; File No. SR–MBS–95–04]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying Fees for the Electronic Pool Notification Service

July 17, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 16, 1995, the MBS Clearing Corporation (''MBS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MBS–95–04) as described in Items I, II, and III below, which Items have been prepared primarily by MBS. 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 proposed rule change modifies the account maintenance fee for the Electronic Pool Notification (''EPN'') service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBS 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

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[4] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[5] 17 CFR 240.19b–4(e)(2) (1994).

[6] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

may be examined at the places specified in Item IV below. MBS has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify the account maintenance fee for the EPN service. Specifically, the proposed rule change modifies the EPN Schedule of Charges to reflect separate account maintenance fees for a direct account and an omnibus account. MBS previously charged EPN Users an account maintenance fee of $250.00 per month per account. MBS will continue to charge this fee for a direct account (i.e., an account maintained by an EPN User acting on its own behalf). MBS, however, will charge EPN Users $250.00 per month per account plus $25.00 per month per customer account, up to a maximum of $250.00 per month per account, for an omnibus account (i.e., an account maintained by an investment advisor or correspondent acting on behalf of others). An investment advisor or correspondent acting on behalf of others previously was required to open separate accounts for each customer account.

The proposed rule change also modifies the EPN billing procedure to reflect the account maintenance fee as a separate type of fee[3] and to enable MBS to waive one or more EPN fees for such time as determined by MBS. This will allow new EPN Users an opportunity to use and become familiar with EPN services before being required to pay fees.

MBS believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[4] and the rules and regulations thereunder in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statements on Burden on Competition

MBS does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. MBS will notify the Commission of any written comments received by MBS.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and pursuant to Rule 19b–4(e)(2) promulgated thereunder[6] because the proposed rule change establishes a due, fee, or other charge imposed by MBS. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to File No. SR–MBS–95–04 and should be submitted by August 11, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17995 Filed 7–20–95; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the language in these sections.

[3] The account maintenance fee previously was included as part of message processing fees.

[4] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[6] 17 CFR 240.19b–4(e)(2) (1994).

[7] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order Approving and Granting Antitrust Immunity

SUMMARY: This document approves and grants antitrust immunity to the agreement in Docket 48831 and those portions of the agreement in Docket 49596 as set forth in the order. The order is published as an appendix to this document.

DATES: The order was issued in Washington, DC, July 13, 1995 and the order became effective on July 13, 1995.

FOR FURTHER INFORMATION CONTACT: Lawrence Myers, U.S. Department of Transportation, Office of the Assistant General Counsel for International Law, room 10105, 400 Seventh Street, SW., Washington, DC (202) 366–9183.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[Order 95–7–19; Docket 48831 Resolution 600b Docket 49596 R–1, R–8]

Agreements adopted by the Cargo Services Conferences of the International Air Transport Association relating to conditions of contract.

Order

Various members of the International Air Transport Association (IATA) have filed two agreements with the Department for approval and antitrust immunity under sections 41309 and 41308 of Title 49, United States Code, and Part 303 of the Department's regulations. They were adopted at the annual meetings of the Cargo Services Conferences in 1993 and 1994 for amended intended effectiveness on October 1, 1994.[1]

In 1989, IATA adopted Resolution 600b, which was a new, abbreviated version of the standard Air Waybill Conditions of Contract contained in Resolution 600b(II), which it was intended to replace. Portions of Resolution 600b were disapproved by the Department in Order 89–10–52 and the decision confirmed on reconsideration in Order 91–10–21. As a result, the airlines continued to use Resolution 600b(II). In 1993, IATA amended Resolution 600b, taking into account the Department's expressed concerns, and submitted the amended version for approval in Docket 48831 with an intended effective date of October 1, 1995. In 1994, IATA further amended Resolution 600b, taking into account certain U.S. court decisions interpreting provisions of the

[1] IATA memoranda CSC/Reso/062, Docket 48831; and CSC/Reso/063, Docket 49596.

Warsaw convention as applied to the contents of a cargo waybill. The latter amendments to Resolution 600b were submitted to the Department as R–1 in Docket 49596, with a revised intended effective date of October 1, 1994, for the resolutions in both dockets.[2]

We will approve the text of Resolution 600b as submitted in Docket 48831, CSC(15)600b. As IATA noted in its justification in that docket, Order 89–10–52 approved the language of paragraph 7.1.1 only upon the understanding that the words ''immediately after discovery of the damage'' do not constitute a time limit for filing claims independent of the specified 14-day period from the date of receipt of the cargo. IATA assures us that the words are ''intended to encourage prompt reporting'' without constituting a separate requirement. We will therefore approve IATA's language, subject to a condition implementing this understanding.

However, with respect to the additional amendments to Resolution 600b submitted in Docket 49596, CSC(16)600b, we have two substantial difficulties. First, IATA has proposed a new paragraph 4.2 which states that in carriage to which the Warsaw Convention does *not* apply, a carrier ''may'' permit a shipper to increase its cargo liability limitation by declaring a higher shipment value and paying a supplemental charge if so required. The cargo liability limitation for this non-Warsaw carriage is the same as that set forth in paragraph 3 for Warsaw carriage: 17 Special Drawing Rights (as defined by the International Monetary Fund) per kilogram of cargo lost, damaged or delayed. Paragraph 4.2 is intended, in IATA's words, to provide the same ''option'' to shippers that is provided by paragraph 4.1 for Warsaw carriage. However, paragraph 4.2 is clearly permissive, while the language in paragraph 4.1 indicates that the shipper's right to declare a higher value under the Convention is absolute for cargo accepted for carriage. We have not objected to the extension of the Warsaw cargo liability limit to non-Warsaw carriage, but are firmly of the view that, in return, the complementary right of the shipper to declare excess value should be no less assured in the case of non-Warsaw carriage. We will therefore defer action on paragraph 3 of Resolution 600b until IATA changes the word ''may'' to ''shall'' in paragraph 4.2, or adopts other acceptable language that assures the shipper of the same right to declare excess value in non-Warsaw situations.

Our second problem with the latest amendments to Resolution 600b is the addition of language to the Notice on the face of the air waybill and similar language to paragraph 7 on the back which may be interpreted by carriers, shippers and the courts as expanding the applicability of the Warsaw Convention to carriage not heretofore considered covered by its provisions, and which could cause great uncertainty over its application.[3]

IATA indicated in its justification that the proposed language was prompted by ''recent court decisions'' interpreting Articles 8 and 9 of the Warsaw Convention.[4] Article 8 of the Convention requires, *inter alia*, that the air waybill shall contain various particulars, including ''the agreed stopping places.'' Article 9 of the Convention provides that if the waybill does not contain these and other particulars, the carrier shall not be entitled to avail itself of the provisions of the Convention which exclude or limit its liability. Apparently, IATA is concerned that courts may deny the carriers the Warsaw limits on their liability unless they list all intermediate points that might be used for any type of stop or else incorporate language such as that proposed which arguably makes any stop selected by the carrier one agreed to by the shipper.

If this is indeed IATA's position, we do not share its premise or agree with its interpretation of the proposed language. In the context of cargo service, whose hallmark is routing flexibility which benefits shippers as well as carriers, the language proposed by IATA is not objectionable from an operational standpoint, and we therefore approved it on that basis by Order 94–7–17 in the context of amendments to Resolution 600b(II). In this sense, the language is merely an elaboration of the right of the carrier under the waybill to determine the routing of the shipment.

However, it is neither necessary nor appropriate to construe the proposed language as broadening the meaning of ''agreed stopping place,'' as that term is used in the Warsaw Convention, where it appears not only in Article 8 but also in Article 1. Article 1 confines the applicability of the Convention itself to carriage between at least two contracting parties or within one contracting party if there is an ''agreed stopping place'' in another jurisdiction, whether or not it is a contracting party.

One of the primary goals of the Convention was legal predictability, and that goal would be undermined if ''agreed stopping place'' in Article 1 had been intended to encompass all possible routings rather than just those expressly agreed to by the shipper and entered on the waybill. Such an interpretation would mean that the determination of many important contractual rights of both carriers and shippers would depend on operational vagaries which may not reflect assent by either party for jurisdictional purposes and, indeed, which may engender wasteful litigation over the facts of individual routings which deviate from points specified on the waybill.

We will approve IATA's language as proposed in CSC(16)600b, but only upon the condition that its reference to intermediate points does not constitute an ''agreed stopping place'' for purposes of jurisdiction under Article 1(2) of the ''Warsaw Convention.'' We similarly clarify that our approval in Order 94–7–17 of amended paragraphs 8./8.1 and 8.2 of Resolution 600b(II), submitted in Docket 49595, is based on the same understanding.[5]

Acting under Title 49 of the United States Code, as amended, (''the Code'') and particularly sections 40101, 4013(a), 41308 and 41309:

1. We do not find Resolution 600b, set forth in the agreement in Docket 48831, to be adverse to the public interest or in violation of the Code, subject to the condition that the phrase ''immediately after discovery of the damage'' in paragraph 8.1.1 of Resolution 600b does not constitute a time limit for filing claims independent of the 14-day period specified elsewhere in that paragraph;

2. Except as provided in finding paragraph 3 below, we do not find R–1 and R–8 of the agreement in Docket 49596, to be adverse to the public interest or in violation of the Code, subject to the condition that the reference to intermediate stopping places in paragraph 2 of Resolution 600b does not constitute an ''agreed stopping place'' for purposes of jurisdiction under Article 1(2) of the Warsaw Convention;

3. We find paragraph 4.2 of Resolution 600b, set forth in R–1 of the agreement in Docket 49596, to be adverse to the public interest and in violation of the Code; and

4. These agreements are a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless approved on foreign policy and comity grounds by Order 85–5–32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, the conferral of antitrust immunity is mandatory under title 49 of the United States Code, as amended.

Order 85–5–32 contemplates that the products of fare, rate and services conferences will be subject to individual scrutiny and will be approved provided they are of a kind specifically sanctioned by Order 85–5–32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Act. Consequently, we will grant antitrust immunity to the agreements set forth in finding paragraphs 1

[2] A French version of the amended Resolution 600b (R–1) was submitted as Recommended Practice 16006 (R–8) in the same docket, along with various other cargo resolutions. Orders 95–2–3 and 95–3–12 approved all these resolutions except R–1 and R–8. In addition, an expedited agreement amending resolutions 600AA, 600AB, 600B(II) and 670A was filed in Docket 49595 and was approved by Order 94–7–17.

[3] The words ''shipper agrees that the shipment may be carried via intermediate stopping places which the carrier deems appropriate'' would be added to the Notice on the face of the waybill, and the underlined words ''Carrier is authorized *by the shipper* to select the routing *and all intermediate stopping places that its deems appropriate* or to change or deviate from the routing shown on the face hereof'' would be added to the last sentence of paragraph 7.

[4] IATA provided no further explanation of its position, but, upon request, provided the Department with a reference to one case, *Maritime Ins. Co. LTD. v. Emery Air Freight Corp.*, 983 F.2d 437 (2nd Cir. 1993).

[5] We understand that IATA intends for Resolution 600b to replace Resolution 600b(II), but wish to make clear the scope of our approval of the latter provisions to avoid the possibility of legal confusion until Resolution 600b comes into effect.

and 2 above, subject to the conditions imposed therein.

Accordingly,

1. We approve and grant antitrust immunity to the agreement in Docket 48831 and to those portions of the agreement in Docket 49596, set forth in finding paragraphs 1 and 2 above, subject to the conditions imposed therein;

2. We disapprove that portion of the agreement in Docket 49596 set forth in finding paragraph 3, above; and

3. We attach the following condition to our approval in Order 94–7–17 of the amendments to paragraphs 8/8.1 and 8.2 of Resolution 600b (II) in Docket 49595: The references to intermediate stopping places in paragraphs 8/8.1 and 8.2 of Resolution 600b (II) do not constitute an ''agreed stopping place'' for purposes of jurisdiction under Article 1(2) of the Warsaw Convention;

4. We defer action on paragraph 3 of Resolution 600b, set forth in R–1 of the agreement in Docket 49596, until such time as IATA amends paragraph 4.2 of the same resolution to assure shippers of the same right to declare excess value when the Warsaw Convention is not applicable as when it is applicable; and

5. We will publish this order in the **Federal Register**.

By:

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–17827 Filed 7–20–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 7, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–296.

Date filed: July 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 3, 1995.

Description: Application of American Airlines, Inc. pursuant to 49 U.S.C. 41102, and Subpart Q of the Regulations, applies for renewal of segment 5 of its certificate of public convenience and necessity for Route 560 (Miami–Mexico City), as amended and reissued by Order 92–5–20, May 8, 1992.

Docket Number: OST–95–297.

Date filed: July 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 3, 1995.

Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, applies for renewal of segment 4 of its certificate of public convenience and necessity for Route 389 (between the coterminal points New York, New York/Newark, New Jersey and Miami, Florida and the coterminal points Rio de Janeiro and Sao Paulo, Brazil).

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–18007 Filed 7–20–95; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended July 7, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–288.

Date filed: July 3, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1776 dated June 23, 1995 r–1 to r–26, TC2 Reso/P 1777 dated June 23, 1995 r–27 to r–34, TC2 Reso/P 1778 dated June 23, 1995 r–35 to r–50, Expedited Within Europe Resolutions.

Proposed Effective Date: Expedited August 15/September 15/October 1 November 1, 1995.

Docket Number: OST–95–289.

Date filed: July 3, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1676 dated June 30, 1995, US–Europe Expedited Resos r–1 to r–11.

Proposed Effective Date: September 1, 1995.

Docket Number: OST–95–295.

Date filed: July 6, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC1 Reso/C 0257 dated June 16, 1995, Cargo Except to/from USA r–1 to r–5.

Proposed Effective Date: October 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–18008 Filed 7–20–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

RTCA, Inc. Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Band (118–137 MHz)

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 184 meeting to be held August 7–9, 1995, starting at 9:30 a.m. on August 7. The meeting will be held at the RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Introductory Remarks; (2) Review and Approval of the Agenda; (3) Monday, August 7: Work Group 2, VHF Data Radio Signal-in-Space MASPS, and Continue Refinement of Upper Layers; (4) Tuesday, August 8: Work Group 3, Review VHF 8.33 MHz written comments relating to DO–186A (draft), VHF MOPS, and vote on acceptance of changes; Advance the VHF Digital Radio MOPS Document Program. (5) Wednesday, August 9: Plenary Session Convenes at 9:00 A.M.; (6) Approve the Summary of the Meeting Held on May 1–3, 1995; (7) Reports from Working Groups 2 and 3; (8) Reports on ICAO AMCP and Update on Comsat Half-Rate Vocoder Tests; (9) Address Future Work; (10) Other Business; (11) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on July 17, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–18006 Filed 7–20–95; 8:45 am]

BILLING CODE 4810–13–M

National Highway Traffic Safety Administration

[Docket No. 95–55; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1992 Jaguar XJS Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Jaguar XJS passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1992 Jaguar XJS that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 21, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1992 Jaguar XJS passenger cars are eligible for importation into the United Stats. The vehicle which Wallace believes is substantially similar is the 1992 Jaguar XJS that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1992 Jaguar XJS to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1992 Jaguar XJS, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1992 Jaguar XJS is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 118 *Power Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1992 Jaguar XJS complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the headlight assemblies and the turn signal lens assemblies. Petitioner states that the non-U.S. certified 1992 Jaguar XJS is equipped with a high mounted stop lamp that complies with the standard.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the ignition switch.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208: *Occupant Crash Protection:* replacement of the upper steering column and steering wheel with U.S.-model components and installation of a driver's side air bag and knee bolster. The petitioner states that in all other respects, the vehicle's passive restraint system conforms to the standard. The petitioner notes that no modifications to electronic wiring or controls are needed because the vehicle's passive restraint system utilizes a mechanical air bag. The petitioner also states that factory equipped Type 2 seat belts are installed in both the vehicle's designated seating positions.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested

but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 17, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–18045 Filed 7–20–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–55]

Suspension of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: Notice is hereby given that on March 6, 1995, the Secretary of the Treasury, pursuant to Section 1641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111.52 of the Customs Regulations, as amended (19 CFR 111.52), ordered the suspension of Customs broker license (No. 7749) issued to Eduardo Gonzales-Ferreras. The suspension will last a period of twenty (20) years.

Dated: July 17, 1995.

Philip Metzger

Director, Office of Trade Compliance.

[FR Doc. 95–17986 Filed 7–20–95; 8:45 am]

BILLING CODE 4820–02–P

General Counsel Designation No. 212; Appointment of Members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101–5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—

Neal S. Wolin, Deputy General Counsel, who shall serve as Chairperson;
Russell L. Munk, Assistant General Counsel (International Affairs);
John E. Bowman, Assistant General Counsel (Banking and Finance);
Robert M. McNamara, Jr., Assistant General Counsel (Enforcement);
Kenneth R. Schmalzbach, Assistant General Counsel (General Law and Ethics); and
Elizabeth B. Anderson, Chief Counsel, United States Customs Service.

(2) For the Internal Revenue Service Panel—

Chairperson, Deputy Chief Counsel, IRS; Deputy General Counsel; Two Associate Chief Counsel, IRS; and Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Dated: July 17, 1995.

Edward S. Knight,

General Counsel.

[FR Doc. 95–17998 Filed 7–20–95; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Claims Adjudication Commission; Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that the Veterans' Claims Adjudication Commission will meet on Tuesday, August 1, 1995 and Wednesday, August 2, 1995, at the Washington, DC office of the Veterans of Foreign Wars of the United States (VFW) (1st Floor), 200 Maryland Avenue, NE., Washington, DC. The Commission shall meet on August 1 from 9:00 a.m. to 4:00 p.m. and on August 2 from 9:00 a.m. to 12:00 Noon.

The major focus of this meeting will be to provide Commission members with an overview of preliminary findings in the statutory reporting areas the Commission is mandated to study and the potential impact of these findings on the adjudication and appellate processes.

The meeting is open to the public; however, no specific amount of time is allocated for the purpose of receiving oral presentation from the public. The Commission will accept appropriate written comments from interested parties on the subject matter addressed during the meeting. Such comments may be referred to the Commission at the following address: Veterans' Claims Adjudication Commission (20C), U.S. Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420.

Additional information concerning this meeting may be obtained by contacting the Commission at (202) 275–5466.

Dated: July 11, 1995.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 95–17944 Filed 7–20–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 140

Friday, July 21, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, July 18, 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 Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki 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), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Dated: July 18, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–18095 Filed 7–19–95; 10:50 am]

BILLING CODE 6714–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Thursday, July 27, 1995.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.

2. **PROPOSED RULE:** Amendments to Part 701.22, NCUA's Rules and Regulations, Loan participation.

3. Proposed Rule: Amendments to Part 741, NCUA's Rules and Regulations, Requirements for Insurance.

4. Appeal from AOD Federal Credit Union of the Regional Director's Denial of a FOM Expansion Request.

RECESS: 10:45 a.m.

TIME AND DATE: 11:00 a.m., Thursday, July 27, 1995.

PLACE: Board Room, 7th Floor, Room 7047–1775 Duke St., Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.

2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

3. Administrative Action under Section 109 of the FCU Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

4. Appeal from a Federal Credit Union of the Regional Director's Denial of a FOM Amendment. Closed pursuant to exemptions (8) and (9)(A)(ii).

5. Midsession Budget Review. Closed pursuant to exemption (9)(B).

6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 95–18108 Filed 7–19–95; 12:42 pm]

BILLING CODE 7535–01–M

UNITED STATES POSTAL SERVICE

Board of Governors

Notice of a Meeting and Vote To Close

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 10:00 a.m. on Monday, July 31, 1995, and at 9:00 a.m. on Tuesday, August 1, 1995, in Denver, Colorado.

At its meeting on July 10, 1995, the Board of Governors voted unanimously to close to public observation its meeting scheduled for July 31, 1995. The members will consider (1) the Postal Rate Commission's Opinion and further Recommended Decision in Docket No. R94–1; (2) a modification in the funding of the Integrated Mail Handling System (IMHS), and (3) additional research and development funding for electronic commerce services.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Fineman, Mackie, Rider, and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

As to the first item, the Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)) because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 40(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing.

As to the second and third items, the Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions.

The Board further determined that the public interest does not require that the

Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3)(9)(B) and (10) of Title 5, United States Code; and section 7.3(c)(i) and (j) of Title 39, Code of Federal Regulations.

The August 1 meeting is open to the public and will be held at the Brown Palace Hotel, 321 17th Street, Denver, in Ballroom B. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

July 31—10:00 a.m. (Closed)

1. Consideration of the Postal Rate Commission's Opinion and Further Recommended Decision in Docket No. R94–1. (Mary S. Elcano, General Counsel.)
2. Consideration of a Modification in the Funding of the Integrated Mail Handling System (IMHS). (William J. Dowling, Vice President, Engineering.)
3. Consideration of Additional Research and Development Funding for Electronic Commerce Services. (Robert A. F. Reisner, Vice President, Technology Applications.)

Tuesday Session

August 1—9:00 a.m. (Open)

1. Minutes of Previous Meetings, July 10–11, 1995.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon.)
3. Consideration of Audit Committee Charter. (Thomas J. Koerber, Assistant Secretary for the Board of Governors.)
4. Quarterly Report on Service Performance. (Yvonne D. Maguire, Vice President and Consumer Advocate.)
5. Quarterly Report on Financial Performance. (Michael J. Riley, Chief Financial Officer and Senior Vice President.)
6. Capital Investment.
   a. Bulk Mail Centers (BMCs) Process Control Systems Replacement [final decision]. (William J. Dowling, Vice President, Engineering.)
7. Report on Western Area Operations. (Craig G. Wade, Vice President, Area Operations.)
8. Tentative Agenda for the September 11–12, 1995, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 95–18145 Filed 7–19–95; 3:49 pm]

BILLING CODE 7710–12–M

Federal Register

Friday
July 21, 1995

Part II

Consumer Product Safety Commission

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its requirements under the Poison Prevention Packaging Act of 1970 (''PPPA'') for child-resistant packaging to change the child and adult tests under which child-resistant packaging is evaluated.

The revisions to the adult test will substitute 100 older adults, from 50 through 70 years old, for the current panel of 100 18–45 year-olds. The senior adults are tested to see if they can properly use the package in two test periods, 5-minutes and 1-minute. These changes will increase the use of child-resistant packaging by making it easier for adults to use properly. The revisions to the adult test do not apply to products that must be packaged in metal containers or in aerosol form, which will remain subject to the present 18–45 test panel and single 5-minute test period requirements.

The revisions to the child test include sequential testing, which can reduce the number of children that have to be tested in order to determine whether a package is child-resistant.

For all tests, the number of subjects tested by any one tester and the number of subjects tested at any one site are limited. Also, standardized instructions are required for the child and senior-adult tests.

DATES: Revised §§ 1700.15(b)(2), 1700.20(a)(3), and 1700.20(a)(4) will become effective July 22, 1996. There will be an additional 18-month blanket exemption from compliance with the new senior-adult requirements. Accordingly, packaging will not be required to comply with the senior-adult test until January 21, 1998.

Revised §§ 1700.20(a) (1) and (2), will become effective January 24, 1996.

New § 1700.20(d), will become effective August 21, 1995.

ADDRESSES: Documents relating to this rulemaking proceeding may be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Michael Bogumill, Division of Regulatory Management, Directorate for Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400, ext. 1368.

SUPPLEMENTARY INFORMATION:

Preamble—Table of Contents

I. The Current PPPA Regulations

The Poison Prevention Packaging Act of 1970 (PPPA), 15 U.S.C. 1471–1476, authorizes the Consumer Product Safety Commission to issue requirements that certain household substances be sold in ''special packaging,''hereafter referred to as child-resistant (''CR'') packaging. The PPPA defines CR packaging as ''packaging that is designed or constructed to be significantly difficult for children under five years of age to open * * * and not difficult for normal adults to use properly.''15 U.S.C. 1471(4) (emphasis added). Under the PPPA, the Commission has defined and established standards for CR packaging. 16 CFR 1700.1(b)(4), 1700.3, 1700.15, and 1700.20. The Commission has also determined which household substances are required to have CR packaging. 16 CFR 1700.14. The existing requirements were developed before the widespread use of CR packaging (''CRP'') and, therefore, without the benefit of the actual use experience and test data that since have become available.

A. Child Test and Criteria

The current child-test protocol (16 C.F.R. 1700.20(a) (1), (2), and (3)) specifies testing with 200 children, ages 42 through 51 months, distributed in 10 groups by specific ages. Each age group consists of approximately one-half boys and one-half girls. A pair of children are given test packages and asked to open them. If both children open their packages, the test is stopped. If at least one child has not opened his or her package after 5 minutes, the opening test is stopped and the children are given a single visual demonstration of the method of opening the package. If the children did not attempt to use their teeth to open the package during the first 5 minutes, they also are told at this time that they may use their teeth to open the package if they wish. Then, the opening test is resumed and continues for another 5 minutes.

For a package to meet the PPPA effectiveness criteria, at least 85 percent

of the children must be unable to open the package within the first 5 minutes, and at least 80 percent of the children must be unable to open the package by the end of the second 5-minute period. 16 C.F.R. 1700.15(b)(1).

B. Adult Test and Criteria

The current adult test protocol, 16 C.F.R. 1700.20(a)(4) and (5), specifies a test panel of 100 adults, ages 18 through 45 years. Seventy percent of the adults must be females and 30 percent must be males. For a package to meet the PPPA effectiveness criteria, at least 90 percent of the adults must be able to open and, if appropriate, properly close the package within the 5-minute test period. 16 C.F.R. 1700.15(b)(2).

C. Noncomplying Packaging

The Congress was concerned that some elderly or disabled persons would be unable to open CRP. Therefore, the PPPA was drafted to permit substances subject to CRP requirements to be marketed in non-CR packages (''non-CRP'') in certain circumstances.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CRP only if (1) the manufacturer (or packer) also supplies the substance in CRP of a popular size and (2) the non-CRP bears conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: ''Package not child-resistant.''16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the ''single-size exemption.'' Section 4 specifies that the reason for allowing non-CR packages is to make substances subject to CR standards ''readily available to elderly or handicapped persons unable to use such substance when packaged in (CR packaging).''

The Commission may restrict the right to market a single size in noncomplying packaging if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In this case, the Commission may, after giving the manufacturer or packer an opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CRP. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

Furthermore, prescription substances subject to special packaging standards may be dispensed in non-CRP if directed by the prescriber or requested by the purchaser. PPPA § 4(b), 15 U.S.C. 1473(b).

Thus, persons who find CRP unduly difficult to use may purchase the single size of a nonprescription product that may be provided in noncomplying packaging or may request that his or her prescriptions be supplied in noncomplying packaging, thereby eliminating the protection that CRP provides against poisoning.

II. CPSC's Changes to the PPPA Protocol

A. Procedural Background

Many consumers find CRP to be too difficult to use. When given the choice, therefore, many consumers purchase products in conventional packaging rather than CRP. [29] [1] Consumers are also making a substantial number of CRP ineffective after bringing them home, such as by leaving the package cap off or loose or by placing the package's contents in a non-CR container. [29] This failure to use or misuse of CRP is a substantial cause of accidental poisonings of young children.

On January 19, 1983, the Commission published an advance notice of proposed rulemaking (''ANPR'') outlining its concerns in this area and explaining possible actions to increase the proper use of CRP, simplify the test procedures, and make the test procedures less affected by possible variables. 48 FR 2389. After considering comments on the ANPR and other available information, the Commission decided to propose amendments to the protocol to address this problem. Also, the proposed amendments would change the protocol to make the test results more consistent and make the child test easier to perform. The Commission published its initial proposal in the **Federal Register** of October 5, 1990. 55 FR 40856.

The original period for written comments on the proposal expired January 3, 1991, and oral comments were received by the Commission on December 5, 1990. The written and oral comments included several requests that the comment period be extended for periods up to 180 days. The requests stated that the testing and evaluations needed to respond to the proposal required the additional time. Some requests also asked for a second opportunity to submit oral comments at the end of the extended period for submitting written comments.

The Commission considered these requests and granted an extension of 180 days, until July 1, 1991, for submission of written comments. Additional oral comments were received on September 12, 1991.

During the original comment period, a commenter suggested certain changes to the proposed adult test. The Commission preliminarily concluded that this suggestion might have merit and requested comment on it. 56 FR 9181 (March 5, 1991).

The Commission received a number of comments in response to the proposed rule and the additional request for comment. The Commission also contracted for additional testing to obtain information to address the comments received on the proposed 5-minute/1-minute test. The Commission then published a further request for comment on additional information used to address comments and on the changes to the test procedures that the Commission preliminarily concluded were appropriate. 59 FR 13264 (March 21, 1994). The Commission denied three requests for extension of the 60-day comment period on that notice.

On January 5, 1995, the Commission approved an amendment of its requirements for child-resistant packaging to change the child and adult tests under which child-resistant packaging is evaluated. Then, on February 6, 1995, the Commission approved a **Federal Register** notice to implement these changes. Immediately thereafter, the Commission was provided with comments on the final rule that had not previously been submitted to the agency during the course of the rulemaking. These comments were circulated by the Coalition for Responsible Packaging (the ''Coalition''), a recently formed ad hoc industry group.

The Commission voted on February 9, 1995, to withhold publication of the final rule in order to consider these new arguments. In order to provide interested parties with every reasonable opportunity to comment on the new issues, the Commission provided for both written and oral submissions. Written comments on these issues were to be submitted to the Commission by March 7, 1995 (60 FR 9654, February 21, 1995). The Commission also held a hearing on March 16, 1995, to receive oral presentations. The hearing was announced in the **Federal Register** of March 6, 1995 (60 FR 12165). After

[1] Numbers in brackets indicate the number of a relevant supporting document in the ''List of Relevant Documents'' in Appendix I to this notice.

considering these comments, the Commission voted on June 15, 1995, to issue the revisions to the PPPA test protocols described in this notice.

The following sections of this notice describe the revisions that were proposed and the revisions that have been included in the final rule. Where the final rule differs from the proposal, the reasons for the changed provisions are stated in this notice.

There have been multiple opportunities for public comment in this proceeding, and providing another such opportunity is unnecessary and would substantially delay implementation of this important safety rule. Accordingly, the Commission concludes that the final rule should be issued without an additional opportunity for public comment.

B. Changes in the Adult Test Panel

Older Adults

The PPPA has helped to significantly reduce the number of childhood poisonings. However, after more than 20 years, many children are still being injured and killed by accidental ingestion of harmful products. In 1994 alone, an estimated 130,000 children under 5 years old were treated in hospital emergency rooms for suspected or actual poisonings. In 1993, poison control centers received reports of more than 6,300 poisonings of young children with effects that were either ''moderate'' (*i.e.*, pronounced and prolonged, generally requiring treatment) or ''major'' (*i.e.*, life-threatening). In addition, 42 children died in these tragic accidents in 1992, the most recent year for which the Commission has complete death data.

The Commission's data show that many CR packages are difficult for many if not most adults to use and that this is a substantial factor in accidental poisonings of young children. In a survey of about 3000 consumers, difficulty in use was the reason given by 42% of the 313 people who left the CR cap off, by 43% of the 389 people who transferred the contents to another container, and by 59% of the 232 who replaced a CR cap with a non-CR cap. [15]

This difficulty in using CR packaging is confirmed by other data in the record. Typical reclosable CR packaging that passes the current adult protocol was considered difficult to use by 22 to 64% of 800 people aged 18–45, depending on package type. [27, 28] Thus, reclosable CR packaging does not fully implement the PPPA's requirement that such packaging not be difficult for normal adults to use properly.

Furthermore, the data show that the improper use of CR packaging is involved in a substantial number of accidental ingestions by young children. For example, one statistical study of the accidental ingestion of medicines by young children showed that 17% of the medicines had been supplied in CR packaging but were not in properly secured CR packaging when ingested. [112] An additional 40% of the medicines in this study were not purchased in CR packaging.

In another study of about 2000 accidental pediatric drug ingestions, 18% of the reclosable containers had caps that were off or loose prior to the ingestion. [29, 92] Of the cases involving toxic drugs, about 6% involved CR closures that were left off or loose, about 17% involved contents transferred from one container to another, and about 18% involved non-CR packages.

Based on this type of data, the Commission concluded that reducing the misuse of CR packaging by adults would reduce the number of accidental poisonings among children, and that this could be accomplished by making CR packaging easier for adults to use. Accordingly, the Commission began a rulemaking proceeding in 1983 to achieve these goals.

The Commission concluded that substituting a panel of older adults, who as a group are less able to open traditional CRP, would exclude the more difficult-to-use designs that now can pass the test with the younger panel. The Commission proposed to substitute a panel of 100 older adults, ages from 60–75 years, for the current panel of 18–45 year-olds. Test participants were limited to those who could demonstrate the ability to open and resecure non-CRP. The Commission's rationale for this conclusion is discussed in more detail in section V(C) of this notice.

Age Groups

In the originally proposed rule, the senior test panel consisted of 100 adults between the ages of 60–75 selected at random. Several comments were received concerning the lack of a defined age distribution of the participants throughout the 60–75 age group. Commenters stated that a random sample would result in 50–60% of the participants being in the 71–75 year-old age group. The commenters placed special emphasis on the variability of the 71–75 year-old age group, as measured by the participants' time to open the packages. The commenters requested that the 71–75 age group be dropped from the test due to high variability and the lack of homogeneity.

To address the comments concerning distribution, the Commission's staff devised modifications to the test procedure that divided the 60–75 year-old age group into three age groups: 60–64, 65–70, and 71–75. This would assure a more uniform spread of subjects throughout the age range. For the reasons discussed below, the Commission decided to change the adult test to a panel of 50–70 year-old adults. Testing conducted in 1991–1993 confirmed that the 60–64 year-old group and the 65–70 year-old group tend to perform similarly. [184, 160] See 55 FR 40858, [27]. Because there was no statistically significant difference between the performance of the 60–64 and 65–70 age groups, they are combined in the final rule into one group covering ages 60 to 70. As discussed below, to reduce the risk that the test results of 50 to 59 year-olds will vary significantly with age, the Commission has decided to divide that group into two groups, one of ages 50–54 and the other of ages 55–59.

Sequential adult test.

Many comments on the originally proposed 100-member adult panel stated that although the Commission included data on packages that passed the 1-minute senior test with a senior-adult use effectiveness (''SAUE'') greater than 90%, the probability of these packages passing consistently was unknown. The commenters stated that SAUE of 95% in 1 test is required to assure that the package will pass consistently at 90%. Commenters stated that the protocol must be designed to avoid failing an effective package with a true proportion a little greater than 90%, or passing a package with a true proportion a little less than 90%. Various commenters suggested that this could be accomplished by eliminating the 71–75 year-old age group, or by decreasing the SAUE acceptance criterion to 85%. However, neither of these changes would address the variability of results with ''borderline'' packages.

To address these comments, the CPSC's staff developed a sequential testing scheme. That test would have maintained the age range of 60–75 years of age and the acceptance criterion of 90, while assuring a high level of confidence for passing packages. [174] The adults, under the staff's plan, would be tested sequentially, in panels of 100, until a statistically reliable pass/fail determination can be made or a total of 400 adults (4 panels of 100) was tested. Providing for a larger number of adults to be tested for packages that perform near the 90 percent criterion would

increase the likelihood of making the correct decision of passing or failing. The sequential testing procedure was published for comment in the **Federal Register** of March 21, 1994. 59 FR 13264.

Many of the subsequent comments indicated that the sequential testing scheme would produce a much greater testing burden on industry. For the reasons stated in section III(D) of this notice, the Commission agreed and reverted in the final rule to the current 100-adult test panel.

Senior Adult Use Effectiveness (''SAUE'')

Successful participants are those who open the test package within the first, 5-minute, period and also open and properly resecure the test package within the second, 1-minute, period. In the proposal of March 21, 1994, the proportions of success for the 60–64, 65–70, and 71–75 year-old age groups were calculated separately and averaged so that the larger 71–75 year-old age group was not more heavily represented. The SAUE was compared to the acceptance criteria for the sequential test to see whether the package has passed or failed or whether another panel of 100 should be tested. The SAUE was calculated in the same manner for 100, 200, 300, or 400 participants.

In the final rule, as noted above, the Commission specifies that the adult test panel shall consist of 100 adults of ages 50 through 70, inclusive.[2] The specified age categories within the 50 to 70 range are weighted according to sample size allocation. Accordingly, there is no longer a need to calculate the proportions of the age groups separately and average them. Therefore, if 90 or more of the adults on the test panel are able to properly use a package, it passes the adult test.

Screening Tests

The proposed rule stated that the senior test panel would be composed only of adults who have successfully passed 1-minute screening tests using non-CRP. The packages used for screening purposes are a non-CR snap and a continuous-threaded package. The participants have to open and to resecure the two non-CR packages within 1 minute for each package. People unable to open either of these packages do not participate in the test. The screening test was proposed to eliminate individuals with limited ability. The range of movement and strength required to open and close non-CR snap and continuous-threaded packages serves as the baseline for test participation.

Several commenters argued that the screening process should apply to people who failed to open the CRP during the first 5-minute test period. The testing firms indicated that participants were frustrated and confused by the number of packages they were asked to open. The CPSC staff adopted the practice of screening only those who fail to open the test package during the first 5-minute period in the testing conducted under contract CPSC–91–1135. The Commission amended the test procedures to incorporate this change.

Homogeneity

In addition to distribution and variability, comments were received about the lack of homogeneity of the 60–75 year age group. The commenters did not define the term homogeneity. Homogeneity is defined by the CPSC staff as the similarity of the subjects of different ages within a particular age group in their ability to successfully open and resecure the various CRP. The CPSC staff statistically analyzed the homogeneity of the three age groups, using the results of tests with reclosable and non-reclosable packages. [187, 188] No significant differences were found in performance within each of the three age groups (60–64, 65–70, and 71–75) for either reclosable or non-reclosable packages. Therefore, no changes to the test procedures are required with respect to the homogeneity of the age groups within the 60 to 70 age range. As noted, the age range of the adult panel in the final rule is 50–70. The data discussed above show there is homogeneity in the 60–70 age range. To reduce the practical effect of any potential lack of homogeneity in the 50–59 age range, the Commission specified that 25 persons would come from the 50–54 age range and that another 25 would come from the 55–59 age range.

C. Adult Test Times

The 5-minute test time of the current adult test probably greatly exceeds the time that consumers are willing to spend attempting to open a CR package. The frustration level experienced by persons trying to open a package depends on both the effort and time required to do so. [132] The Commission proposed that the effort required to open and, if appropriate, resecure CRP should be reduced by requiring that closures can be opened and resecured by adults older than the currently required 18–45 age group. In order to ensure that CRP is not so difficult to use that adults must spend an unreasonable amount of time trying to open and close the packaging, the Commission proposed to reduce the time period for the adult test to 1 minute. Shortening the test time will help ensure that CRP is acceptable to users and will therefore be used properly.

In order to allow the use of new packaging designs that are unfamiliar, the originally proposed 1-minute opening/resecuring test would have been preceded by a 30-second period that the test subject could use to become familiar with how the package operates. During the original comment period, a commenter suggested that the proposed 30-second familiarization period be extended to 5 minutes and that the test subject must be able to open the package during that time. The subjects who were successful in opening the package during the familiarization period would then be tested to see if they could then open and, if appropriate, resecure the package within 1 minute. Subjects would have to be successful in both time periods in order for the package to pass the adult test. The commenter suggested that the longer familiarization period would allow time for test subjects to learn how to operate unfamiliar designs. The Commission preliminarily concluded that this suggestion might have merit and requested comment on it. 56 FR 9181. The final rule incorporates this suggestion.

D. Changes to Simplify the Child Test

Other proposed amendments were intended to simplify the current child-test procedures, without reducing the ability of the test to determine child-resistance. These proposed amendments included testing for child-resistance by using sequential groups of 50 children, rather than using the full 200-child panel each time, until a statistically valid determination of whether the package is CR is obtained, or until the current number of children tested, 200, is reached. Also, the Commission proposed to use 3 age groups, of 42–44, 45–48, and 49–51 months, with 30, 40, and 30% of the children in each age group, respectively, instead of the current 10 age groups between 42 and 51 months.

A comment was received requesting that the calculation of age be based on ''near age'' rather than on the month in which the child was born, as in the original proposal. The commenter indicated that ''near age'' makes it possible to calculate a child's age plus

[2] Elsewhere in this notice, the terms ''50 to 70'' and ''50–70'' mean ''50 through 70, inclusive.'' The same sort of terminology applies to the other age ranges mentioned in this notice, e.g., 18–45.

or minus 15 days. If the month of birth is used, the distribution could range from plus or minus 30 days.

The current PPPA test procedures defined in 16 CFR 1700.20(a)(1) indicate a distribution of children by ''nearest age.'' The term nearest age was not included in the revisions as originally proposed. The CR package testing contracted by CPSC uses a standardized formula for the calculation of the children's age to the ''nearest'' month. In response to the comment, the March 21, 1994, proposal included a calculation for near age as part of the child-test procedure.

These child-test changes are procedural and are not expected to change the test results. Accordingly, these changes will have no effect on the ability of currently available CRP to meet the effectiveness criteria.

E. Changes to Ensure Test Consistency

Other proposed amendments were intended to ensure that the test protocol produces more consistent results. These amendments are: to add an optional procedure for determining whether the package has been secured adequately by the adults; to limit the number of subjects that could be tested by any one tester to no more than 30% of the children or 35% of the adults (in both the senior- and younger-adult tests); to limit the children in each group who are tested at or obtained from any given site to not more than 20%; to limit the percentage of the total number of senior adults tested who are tested at or obtained from any given site to not more than 24%; to limit the total number of younger adults obtained or tested at any one site to 35%, and to issue guidelines for standardized instructions to be used when testing.

The current PPPA regulations do not include the test instructions used by CPSC for the child and adult test. The Commission originally proposed adding a recommendation to § 1700.20 for the use of standardized instructions as voluntary guidelines for conducting the child and adult tests. The Commission received comments supporting standardization of the test procedures.

The Commission agreed that the procedures and instructions for the senior and child tests should be followed closely to ensure the statistical reliability of these tests and to control variability. Accordingly, the Commission's March 21, 1994, **Federal Register** notice proposed to include standardized instructions for the child and senior-adult tests in the rule.

F. Adult-Resecuring Test

The PPPA requires that adults be able to use CRP properly, which includes both opening the package and resecuring it to a CR condition. The adult-resecuring test proposed by CPSC can be used to determine whether packages have been properly resecured when an objective determination that this has occurred (e.g., visual or mechanical) cannot otherwise be made.

When such packages have been opened and appear to be resecured during the adult test, they are given to children to open according to the child-test protocols. If more than 20% of these children succeed in opening the packages, the number of children in excess of 20% count as failures to resecure by adults.

III. Comments on the Proposal

Thirty-six commenters submitted information and comments in response to the March 21, 1994, **Federal Register** notice. The comments focused on several areas, including the availability of test subjects, the cost of package development and testing, and the effective date for implementation. In addition, the Commission received 21 comments in response to the February 21, 1995, **Federal Register** notice concerning the issues that had not been raised previously in the rulemaking. (These issues are: (i) Older adults are not ''normal adults'' under the statute and therefore must be excluded from the adult test panel, and (ii) the revised protocol allegedly addresses convenience rather than safety.) Also, nine persons spoke at the oral hearing on March 16, 1995. Furthermore, more data and arguments concerning the new issues were provided in correspondence and meetings after these opportunities for comment. The Commission's response to these comments and to other comments received previously but not addressed, is given below. Comments on economic issues are addressed separately in section IV of this notice.

A. Child Test Protocol Changes

The only change to the previously-proposed child test protocols by the March 21, 1994, **Federal Register** notice was to make the standardized test procedures part of the rule rather than suggested guidelines. The Commission received comments on the standardized test procedures and also received comments on aspects of the child test that have been in effect for over 20 years. The comments on the child test protocols, and the Commission's responses, are described below. Comments made about child testing of unit packaging are addressed in section III(B), below.

Consent Forms

Several commenters indicated that the mandatory use of informed consent for child protocol testing will decrease the population of children available for testing and increase the time and cost of testing. Commenters contended that the Commission tried to require informed consent in the late 1970's but withdrew the proposal based upon the comments that were received at that time. Some commenters requested that all mention of consent for children be eliminated from the revised protocol. Other commenters indicated that the protocol should state that informed consent should be required only if required by the contracting party or testing agency.

In 1972, the Commissioner of the Food and Drug Administration (''FDA'') proposed amending the CR test procedure to require informed consent (37 FR 26833). This proposal was withdrawn in 1979 by the Commission because general U.S. Government regulations for the protection of human subjects made specific PPPA human subject requirements unnecessary (44 FR 55310). The CPSC is required by the regulations for the Protection of Human Subjects (16 CFR 1028) to use informed consent in all human testing conducted by or for the agency. Therefore, the statement that each child's parent or guardian should read and sign a consent form prior to testing was included in the rule to ensure that the test specified in the standard is the same procedure that CPSC must use for compliance purposes.

Because informed consent must be used in CPSC-sponsored testing, the Commission does not believe that the statement about informed consent should be deleted from the test protocols as requested by one commenter. Commenters stated that most child testing is done without informed consent. The Commission has no data showing whether there are differences in test results conducted with and without informed consent. Therefore, the final rule differs from the proposal in that the final rule states that the Commission will not disregard results of child tests performed by other parties simply because the tests were conducted without informed consent.

Test Sites

The proposed child test procedure states that the testing should be done in a location that is familiar to the children; for example, their customary nursery school or regular kindergarten.

No more than 20% of children in each group shall be tested at or obtained from any one site.

Commenters requested that child testing be allowed to be performed at one or more central locations, provided the children are drawn from a variety of locations within the geographic area and the children are made to feel comfortable at the test site.

Although this approach might make it easier to conduct the tests, the Commission has concerns about the effect of unfamiliar surroundings on CR package testing. The current regulations contain the requirement for familiarity; therefore, all data collected for the past 20 years were collected from tests conducted in familiar surroundings. It is not known what influence unfamiliar surroundings might have on a child's participation in the test, and the commenter did not provide data on this issue. For example, a child may be distracted during testing because of being separated from a parent in a strange place, or by being paired with another child who is a stranger rather than a classmate. Therefore, testing will continue to be conducted at five sites familiar to the children.

Sample Preparation

Commenters indicated that the sample preparation sections of the child and senior tests should be consistent. The Commission agrees and has modified section 1700.20(a)(2)(iv)(1) of the child test instructions to state:

> Reclosable packages, if assembled by the testing agency, shall be properly secured at least 72 hours prior to beginning the test to allow the materials (*e.g.*, the closure liner) to ''take a set.'' Application torques must be recorded in the test report.

The proposed child-test instructions also stated that reclosable packages shall be opened and properly resecured one time by the tester who will be conducting the test. Commenters requested that testers resecure torque-dependent packages to a specified torque prior to testing the samples with children. Commenters voiced concern that test results would depend on the strength of the tester and not on only the child/package interaction.

The Commission opposes resecuring packages that are to be child tested to a specified torque, because the preparation of samples is designed to mimic the situation found in the home. Testing packages with a specific application torque only represents the child-resistance at that torque and above. Machine application torques only represent the first opening and not how the package will be available to the children in the household most of the time. Having people resecure the packages prior to testing better mimics the home situation. The commenters provide no information about what criteria would be necessary to determine the appropriate torque in this case. The Commission agrees, however, with comments stating that it is not necessary for the same tester who conducts the test to open and resecure the packages before testing, and has modified the instructions in the final rule accordingly.

The commenters also indicated that test instructions should include a test to determine that a CR package will continue to function for the number of openings and closings customary for its size and contents, as required by the current PPPA regulations. The Commission agrees with this comment and has added the standard procedure for multiple openings/resecurings used by CPSC in Instruction 3 of the Child Test Instructions.

Child Test Instructions

Several comments were received regarding the child test instructions. Most of these comments requested clarifications of the instructions printed in the March 1994, **Federal Register** notice. Several minor changes to wording of the instructions have been made by the Commission in response to these requests and suggestions.

Seating

One comment concerned the statement in the instructions that children are required to sit in chairs. It was requested that this statement be deleted because chairs are not practical for testing large or tall containers. The Commission agrees that chairs may make it difficult for children to handle large or tall containers. Therefore, the Commission has changed instruction 6 of the child test to read ''The tester, or another adult, shall escort a pair of children to the test area. The tester shall seat the two children so that there is no visual barrier between the children and the tester.''

It is important, however, that tests be conducted consistently. If a large or tall package is tested, all the children tested should sit on the floor. If a table and chairs are used, all children tested should be tested at tables and chairs. This does not restrict the children from freedom of movement during the test as indicated in the test instructions. The Commission recommends that testing agencies note on the data sheets and in the test report whether children have been tested on the floor or in chairs.

Use of Teeth

Children often use their teeth to try to open packages when they are at home. It is therefore important to determine whether CR packaging can be opened by children when they use their teeth. However, children may feel inhibited about doing so during the test. Accordingly, the current child test procedure states that if one or both children have not used their teeth to try to open their packages during the first 5 minutes, the tester shall say, ''you can use your teeth if you want to'' before the start of the second 5-minute test period. Some commenters requested that the instruction to use teeth be given before the demonstration instead of after. These commenters request moving the statement because when the instruction is given immediately before the second 5-minute test period, the children do not try to open the packages as the tester demonstrates but put the packages immediately into their mouths. The commenters contend that the present order of instructions minimizes the effect of the demonstration and emphasizes the permission to use teeth. The commenters want to separate the instruction that teeth can be used from the demonstration of how to open the package.

The Commission disagrees with the solution proposed by these commenters. The suggested change would simply reverse the impact by giving the statement that teeth can be used at the end of the first test period, after children have put the package down. The subsequent demonstration may negate the effect of the permissive statement.

There may be better ways to address these commenters'' concern that the teeth-using instruction be separated from the demonstration so the children will have an opportunity to model the tester's actions. For example, the timing, rather than the order, of the instruction regarding teeth could be altered (*e.g.*, one minute after the demonstration). [234] However, it is not known whether this would actually better mimic the situation that exists in the home. Furthermore, the effect of this modification on test results is unknown, since a shorter time period would be available for children to use their teeth. For unit packaging, this could affect the quantity of product children access during testing. As with the commenters' proposal, such a change could result in future test outcomes which differ significantly from those obtained in the past.

The Commission concludes that the stringency of the child-resistance test should not be increased or decreased

without a demonstrated need to do so. Should data become available in the future to clarify the impact of such a change to this portion of the protocol, the Commission can consider this issue further.

Some commenters requested that, after the test, the tester say, ''I KNOW I TOLD YOU THAT YOU COULD USE YOUR TEETH TODAY, BUT YOU SHOULD NOT PUT THINGS LIKE THIS IN YOUR MOUTH AGAIN.'' The Commission considers this to be acceptable. However, testers must remember to modify this statement if the children used their teeth before the demonstration. The child-test instructions in the final rule incorporate these changes.

B. Unit Packaging—Non-Reclosable

Several comments were received regarding the proposed test protocols as they relate to unit packaging. A commenter indicated that it is not possible to make senior-friendly unit-dose packaging that is CR. Commenters provided alternative suggestions: maintaining the existing 18- to 45-year-old test group for unit packaging, amending the child test protocols to eliminate the use of teeth, or reducing the age of children tested. The Commission does not believe that these commenters' suggestions are necessary or warranted. Responses to individual issues related to unit packaging are addressed below.

Child-Resistance

Commenters indicated that the test for child-resistance is too stringent for unit-dose packaging because the children are told to use their teeth, and the children tested are much older than 2-year-olds (the average age of the children ingesting substances).

The Commission disagrees with these comments. Children use their teeth to open packaging. However, they are less likely to do so in front of an adult stranger. [234] Therefore, the statement about teeth is an important part of the test because it may lessen the inhibition a child may feel while being watched by a stranger. The commenters have provided no information to support eliminating the statement about teeth from the child-test protocol.

The commenters indicated that the children tested are older than the at-risk population of 2-year-olds who are involved in almost half of the poisoning incidents. The commenters state that the best way to have senior-friendly packages is to test only the population of children most at risk. Alternatively, the commenters request that the test with older children be ''calibrated'' by decreasing the time of the test or changing the pass/fail rates.

The Commission disagrees with these comments. The PPPA is intended to protect children less than 5 years of age from serious injury from handling, using, or ingesting hazardous household chemicals. 15 U.S.C. 1471(4). Changing the age of the children to 2-year-olds would leave the older children unprotected. The current protocol, which has been used for the past 20 years, already excludes children 52 to 59 months old, who are the most capable children in the population at risk. The test also allows a liberal 20% failure rate. Lessening the CR standards by decreasing the age of the children tested, lessening the time of the test, or decreasing the standard for child-resistance would lessen the protection that the PPPA was intended to provide.

Several commenters indicated that unit-dose packaging is inherently CR because children have to open individual blisters. The commenters cite the European standards, which allow opaque blister packaging to be considered CR. Commenters indicated that these packages are easy for adults to open and do not endanger children.

The definition of child-resistance for unit packaging under the current PPPA regulations can depend on the toxicity of the product being packaged. A test failure for unit packaging is any child who opens or gains access to the number of units that constitute the amount that may produce serious personal injury or illness or to more than 8 units, whichever number is lower. 16 CFR 1700.20(a)(3).

Test data with different ''non-CR'' unit packaging types indicate that 80–90% of children can access at least one unit. If this unit contains a product toxic enough to cause serious effects in a child, there is no child-resistance. These products do exist. This point was illustrated by Rosanne Soloway, representing the American Association of Poison Control Centers, at the December 5, 1990, presentation of oral comments. Ms. Soloway described scenarios where accidental ingestion by children of only one tablet of certain medicines resulted in coma and brain damage. Unit packaging that will not pass the tests for child-resistance is not inherently CR.

Commenters state that it is important that seniors have packaging to help them take their medications. One commenter indicated that unit packaging is an important mechanism of patient compliance and gave mnemonic oral contraceptive packaging as an example of successful packaging. These hormone-containing products were exempted from the CR requirement or oral prescription drugs because they have low toxicity. 49 FR 44455. However, children do ingest these products despite their being marketed in unit-dose packaging. Poison control centers report that almost 10,000 children a year ingest birth control pills without serious problems. [263] To define all unit packaging as CR would sacrifice the protection of children in order to promote better drug compliance. The Commission believes that a better approach is to improve unit packaging so that both purposes can be achieved.

Senior-Adult Use Effectiveness

Some commenters requested that unit packaging should be exempted from the senior test because there is no ''effective technology to deliver blister/pouch security without adult tool usage.'' The Commission does not agree with this statement. A blister package and pouch that do not require the use of a tool to open were tested by 60 to 75 year-olds as part of the CPSC testing program. [157, 159, 194] The results, which appeared in the March 21, 1994, **Federal Register** notice, demonstrate that it is possible to make senior-friendly, CR, unit packaging that does not rely on the use of a tool. Furthermore, the Commission is not averse to the tool concept, because many package types, especially food packaging, require the use of a tool to open. Rather than exempting unit packaging from the revised adult test requirements, the Commission believes that a better approach is to give proper instructions for opening a package, especially when a tool is required.

Some commenters claimed that the amount of time it takes older adults to open CR blisters contradicts CPSC's statement that the majority of participants thought these packages were ''easy to use.''

The statement that the majority of participants thought that the test packages were ''easy to use'' was derived from asking the participants to rate the package on a scale of 1 to 5 following the test. [194] The ease-of-use determination is based on the opinion of the participant and not on the actual time to open the package. The average opening times for the blister package were 40 seconds and 20 seconds for the first and second test periods, respectively. The commenters compared this to the average time for seniors to open a non-CR unit packaging, which was approximately 20 and 10 seconds for the two test periods. It should be noted that, although the times to open non-CR blister packages averaged 20

seconds, the actual times ranged from 2 to 90 seconds. The Commission believes that ease of use of unit packaging can be improved by giving clear opening instructions.

Failure for Unit Packaging

Some commenters requested that the limitation of more than eight units be eliminated from the child test definition of failure.

The current regulations state that a test failure for unit packaging is any child who opens or gains access to the number of individual units that constitute the amount that may produce serious personal injury or serious illness, or a child who opens or gains access to more than 8 individual units, whichever number is lower, during the full 10 minutes of testing. 16 CFR 1700.20(a)(3). The original PPPA regulations defined five units as a failure. This was established to provide the packaging industry with parameters for the development of unit packaging, but it was found to be too restrictive. The number of units was changed to eight in 1973 (93 FR 12738). The concern at that time was the uncertainty of determining the amount of a product that produces serious personal injury or illness to a child.

The commenters did not provide any test or other parameters for determining what amount of product in excess of eight units would cause serious effects in children. This would have to be done before this comment could be implemented. If such information becomes available in the future, the Commission may reconsider this issue.

Certain commenters requested clarification of the term ''opens or gains access.'' A unit-dose packaging trade association proposed a definition of failure for solid dosage forms in unit-dose blister packaging. The suggested definition would not cover liquids or items that can cause significant harm to children in small amounts. The suggested definition focuses on the absolute amount of the product removed from the package during the test and not the potential for removal. A blister with the backing removed and the pill totally exposed but not removed would pass, according to the commenters' definition. However, in that case, the product would be accessible to children. A puncture made by a child's tooth in a blister that contains a hard tablet may not allow the child access to the pill. However, the same tooth puncture in a blister with a tablet that can be easily pulverized and sucked out by the child is accessible.

The Commission is not adopting the commenter's proposed definition, but the test results can be interpreted in accordance with the discussion given above. The Commission is including the following language to clarify the meaning of ''opens or gains access to'': ''The number of units that a child opens or gains access to is interpreted as the individual units from which the product has been or can be removed in whole or in part.'' This is a modified version of language submitted by a another commenter. If companies have questions concerning individual products, the Commission's Office of Compliance is available to discuss these issues.

C. ''Innovative'' or Novel Packaging

Several commenters indicated that a separate test method should be employed for novel or innovative packaging. Failure of novel designs to pass the 5-minute/1-minute senior test is interpreted by these commenters as a flaw of the test because it does not take into account the unfamiliarity of the package. Other commenters indicated that, for novel packages, participants should be told that the packages they are testing are not like the ones they have at home and that they should follow directions very carefully.

The purpose of the PPPA protocol revisions is to ensure the availability of CRP that normal adults, including older adults, can use without difficulty. It is contrary to the purpose of the regulation to adopt a separate, less stringent, test procedure to promote new designs that do not meet the minimum standards.

Giving participants the information that the packages they are testing may be unfamiliar to them is reasonable. However, additional emphasis on the instructions for novel designs, or admonitions to follow them very carefully, are inappropriate since this situation would not occur in the home.

It is better to present the information, that the designs may be unfamiliar, in a standard format. The description of the test in the consent form is appropriate for this purpose. Accordingly, the Commission is adding the following sentence to the consent form: ''You may or may not be familiar with the packages we are testing.''

D. Senior Test

A number of comments were received regarding the senior test. These comments are discussed below.

Normal Adults

One of the two new comments that were received after February 6, 1995, was that older adults are not ''normal adults'' under the statute and therefore must be excluded from the adult test panel. This issue is discussed below.

1. Introduction and background. The PPPA was enacted in 1970 to reduce the number of deaths and injuries to young children who accidently ingest poisonous products. It authorized the Department of Health, Education, and Welfare (''HEW'') to issue CR packaging requirements for such substances. In 1973, this authority was transferred to the newly-created CPSC.

In addition to providing that special packaging must be significantly difficult for children under age 5 to open, section 2 of the PPPA requires that the packaging must be ''not difficult for normal adults to use properly'' (emphasis added).[3] This adult requirement reflects Congress' concern that if CR packaging were difficult to use, people would fail to put the caps back on correctly or would transfer the contents to non-CR containers. The PPPA also accommodates those adults who are unable to use CR packaging by allowing companies to make non-CR packaging for such individuals in certain circumstances.[4]

The PPPA itself does not define the term ''normal adults,'' nor does it establish any procedure to determine difficulty of adult use. However, the PPPA's legislative history defines the term ''normal adults'' as ''the broad range of the adult population not having handicaps hindering their [proper] use of special packaging'' (emphasis added). S. Rep. No. 91–845, 91st Cong., 2d Sess. 9 (1970) (''S. Rep. No. 91–845''). To avoid limiting the development of technology, the PPPA contemplated that performance standards would be established to evaluate the child-resistance and adult-use effectiveness of child-resistant packaging designs.[5] As the Senate Report notes, the statutory definition of child-resistant packaging expressly leaves it to the Commission to determine the parameters of special packaging in each case.[6]

The current protocol attempts to ensure that CR packages are not difficult for normal adults to use by requiring that the packages must be able to be opened and, if appropriate, properly closed within 5 minutes by 90% of a panel of 100 persons, 18 to 45 years of age, with no overt physical or mental handicaps. 16 CFR 1700.15, 1700.25.

The test protocol adopted by the Commission, which tests whether 50–70

[3] 15 U.S.C. 1471(4).

[4] 15 U.S.C. 1473.

[5] Thus, the law prohibits the Commission from specifying specific package designs, product content, or package quantity. 15 U.S.C. 1472(d).

[6] S. Rep. No. 91–845 at 9.

year-olds are able to open CR packages, is a surrogate for whether normal adults of all ages will have difficulty using such packaging. Certain commenters contended, however, that it would be unlawful to include older adults on the panel because they allegedly are not ''normal adults'' under the statute. These commenters further argued that section 4 of the PPPA exempts the ''elderly'' and ''handicapped''[7] from being considered as ''normal adults.'' The Commission disagrees with these claims that older people are not normal adults or that the proposed panel is unlawful.[8]

2. The term ''normal adults'' does not exclude all *''elderly'' persons.* The statute does not define ''normal adults.'' However, the legislative history of the PPPA indicates that the term normal adults is not limited to the 18–45 year-olds who make up the current test panel.

> ''The definition of special packaging leaves it to the Secretary [of Health, Education, and Welfare, now the Commission] to determine specifically the parameters of special packaging in each case. The [Senate] Committee [on Commerce], however, set limits to the parameters by specifying that special packaging must be significantly difficult [for children] to open . . ., that it need not keep out all children, that it not be difficult for normal adults—the broad range of the adult population not having handicaps hindering their use of special packaging to use properly, and that the target age-group is children under six [five, as enacted] years of age.''

S. Rep. No. 91–845 at 9 (emphasis added). Any claim that the term is limited to persons age 45 and below is inconsistent with this description of normal adults. Furthermore, the description of ''normal adults'' as including ''the broad range of the adult population'' implies that there will be considerable variation in the abilities of persons across that range.

In addition, human factors considerations also indicate that the broad range of normal adults includes the elderly. The Division of Human Factors notes that there is considerable overlap in the physical capabilities of younger and older adults. [287]

One industry commenter appeared to equate normal adult with the ''norm'' of the adult population, and questioned how that can be determined if only the ''extremes'' of the population are tested. The Commission's Human Factors staff noted that the commenter inappropriately applied the concept of norm. The term norm, as used by the commenter, is a point value and cannot be used to determine the qualities of a range, such as the capabilities of normal adults. If norm were interpreted only as the average (*i.e.*, mean) value, it would be age 41 for the U.S. adult population. If norm were interpreted as the most common age, it would be age 29 for the U.S. adult population. Under either interpretation, structuring a test panel comprised only of subjects of a single age would be impracticable and uninformative about large segments of the population. Moreover, the age chosen could change with each census. Another commenter similarly described ''normal'' as only those of average or better capabilities. Because average is typically the halfway point, this commenter would exclude half the population from being considered normal. Congress could not have intended such results.

Also, the 60–75 test panel does not consist of the upper extreme, which generally is considered to be the 95th percentile of the studied population. According to Human Factors, the 95th percentile of U.S. adults is above age 75. Thus, the revised protocol specifically excludes the extreme.

3. Section 4 of the PPPA does not limit the meaning of ''normal adults'' in section 2. Some commenters argued that section 4 of the PPPA, in effect, defines normal adults to exclude the ''elderly'' or ''handicapped.'' This is incorrect.

As explained above, section 4 allows manufacturers and packagers to market regulated substances in non-CR packaging in certain circumstances. The reason for this exemption is to make ''any household substance which is subject to a standard * * * readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard.'' 15 U.S.C. 1473(a) (emphasis added).

There will always be people who, regardless of the adult test protocol in force, cannot use CR packaging. This is the segment of the population—whose size is determined not by age but by the state of the art of CR packaging and the degree of difficulty allowed by the standard—that non-CR packaging is intended to serve. Section 4 simply assures that companies will be permitted to make non-CR packaging available to these people. It does nothing more.

Certain industry commenters interpreted section 4 to mean that the statute divides the entire adult population into three distinct groups: ''normal adults,'' the elderly, and the disabled. These commenters argue that section 4 defines ''normal adults'' to exclude elderly people, and that they therefore may not be on the test panel. This argument is based on the premise that section 4 defines the term ''normal.'' However, it does no such thing.

One of these commenters has also argued that section 4 is designed to make packaging available not only to the elderly or disabled, but to all adults for whom ''child resistant packages would be difficult * * * to open.'' [277, pp. 2–3] While it is true that section 4 is designed to assist anyone who cannot open CR packaging, this is inconsistent with the argument that section 4 defines the term ''normal adult.'' That is, if section 4 defined ''normal'' and if it excluded the elderly, disabled, and anyone else who had difficulty using CR packaging, then each of these groups would have to be excluded from the test panel. However, this would mean that every CR package would pass the adult test with a score of 100% because anyone who had difficulty opening the package would, by definition, be ineligible to test it.

The debate between the two houses of Congress concerning the scope of the exempt size provision of the act also provides insight concerning the population of adults that Congress regarded as being normal. The House of Representatives favored a provision that would have made CRP the exception rather than the rule, requiring CRP for only one size intended for use in households with young children. This position was based on data indicating that 75% of all U.S. households had no children between the ages of 1 and 5. According to the House rationale, requiring members of these households to purchase products in CRP would be illogical. H.R. Rep. No. 1642, 91st Cong., 2d Sess. 6 (1970). Thus, the adults whom the House expected to use child-resistant packaging were those who actually had children, i.e., adults roughly 18 to 45 years of age.

The Senate, on the other hand, recognized that the problem of accidental poisoning was not limited to the immediate households in which children reside. It therefore favored legislation that would generally require CRP for all products subject to CR standards, with a limited exception providing non-CRP for those individuals physically unable to use products in CRP. S. Rep. No. 91–845 at 11. Under

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[7] The term ''handicapped'' is hereafter referred to as ''disabled,'' except where context requires the use of the statutory term.

[8] It should be noted that the Coalition for Responsible Packaging and its members were the proponents of this argument with respect to the previously proposed panel of 60–75 year-olds. However, the Coalition has publicly endorsed the Commission's decision to adopt a panel of 50–70 year-olds. [299] Thus, these industry commenters apparently now agree that the adult panel adopted by the Commission is permissible under the PPPA.

this scheme, since virtually all product sizes would be child-resistant, adults of all ages, as opposed to only those who had children, were the expected purchasers. Incapacity, not age alone, determined the parameters of the exempt size provision. Ultimately, the law as enacted adopted the Senate approach. Thus, the Congress clearly intended that ''normal adults'' include persons older than persons expected to have young children in their homes.

4. Even if section 4 did limit the meaning of ''normal adult,'' only those persons unable to use CR packaging would be excluded. To argue that all elderly or handicapped persons are excluded from being ''normal adults'' is to ignore the statute's qualifying phrase that section 4 is for persons ''unable'' to use CR packaging. Thus, even if section 4 were a limitation on the meaning of normal adult, which it is not, only those elderly or disabled persons who lack the capability to use CR packaging would be excluded.

Some commenters claimed the Commission's interpretation of ''normal adults'' eliminates the concept of age from the definition of ''normal adult,'' in contravention of the use of the term ''elderly'' in section 4. This argument is incorrect. The term ''elderly * * * unable to use'' in section 4 acknowledges that the sorts of ailments that may be associated with or caused by advanced age can render people unable to use CR packaging. However, section 4 simply cannot be read to exclude all elderly adults from being normal adults.

An industry commenter also argued that if the test panel is to include older adults, it must at least ''exclude those elderly persons who could not open'' CR packaging. [277, p. 4] This could be accomplished, according to the commenter, through a pre-test by ''giv[ing] the panel member the CR package * * * and exclud[ing] those elderly persons, who could not open it from the test group.'' [277, p.4] However, as discussed above with respect to another comment, if all older adults who failed to open the CR package were excluded from the panel, every package could, and in fact would be guaranteed to, pass with a perfect score.

Even in the 18–45 age group, there are persons who are disabled to the point that they cannot open CR packaging. The current test protocol, issued by the FDA in 1971, specifies that the adults on the panel shall have ''no overt physical or mental handicaps.'' 36 Fed. Reg. 22151 (November 20, 1971); 21 C.F.R. Part 295 (1972), now codified at 16 CFR 1700.20(a)(4). This prohibition of overt disabilities was the only condition in the original test protocol that would bar the participation of ''handicapped'' persons within the specified age range. Accordingly, people are permitted to participate in the current adult test even if they have disabilities that are not overt—*e.g.*, certain forms of arthritis—but may still affect their ability to open CR packages. Thus, FDA did not feel compelled by the reference to the ''handicapped'' in section 4 to exclude all disabled persons from the category of normal adults. Similarly, even if section 4 limited the definition of ''normal,'' not all older adults would have to be excluded from the adult panel.[9]

Finally, a commenter argued that the greater difficulty older adults have in opening traditional CR packaging proves that they are inherently disabled compared to younger adults and therefore cannot be considered ''normal'' adults. As explained above, however, just because the older participants'capabilities may be somewhat diminished in the use of traditional CR packages does not mean those adults fall outside the ''broad range'' of the adult population. Moreover, the commenter's argument overlooks the fact that the older adult panel can perform at a very high level—scoring 95% and above in CPSC tests—with packages that pass the revised protocol. Thus, under any interpretation, older adults do not have a less than normal ability to open the new type of CR packages.

5. The Commission is vested with broad discretion to establish the test protocol and criteria to determine whether packaging is not difficult for normal adults to use. Obviously, there is no one performance criterion that establishes a single point at which packaging transforms from difficult to not difficult for normal adults to use. Nor does the statute specify a point at which packaging will be deemed ''not difficult for normal adults to use.'' Congress gave the Commission broad discretion to address these issues.

The Senate Report specifically acknowledged the Commission's power ''to determine specifically the parameters of special packaging.'' [10] Additionally, the preamble to FDA's initial test protocol states that ''if experience in application of this protocol indicates a need for change, it may be appropriately amended at that time.'' [11] This is exactly what the rule now issued by the Commission accomplishes.

The PPPA and its legislative history provide further support for CPSC's authority to adopt CR standards that require companies to improve their packages to meet the state of the art. CPSC's packaging standards must be ''technically feasible, practicable, and appropriate . . .'' 15 U.S.C. 1472(a)(2). According to the legislative history, packaging is ''technically feasible'' if ''technology exists to produce packaging conforming to the standard . . . However, *this requirement does not mean that the [Commission] must establish standards that can be met by the lowest, or even the average, level of packaging technology extant in the industry.*''

S. Rep. No. 91–845 at 10 (emphasis added).

And, a standard is ''practicable'' when special packaging for the covered products is adaptable to modern mass production and assembly-line techniques. *Id.* at 10. In addition, Congress made clear that it ''did not desire to limit in any way the development of new forms of special packaging.'' *Id.* at 9.

Thus, CPSC is not required to gear PPPA regulations to the lowest common denominator in the industry. As the state of the art in packaging technology continues to change, so may CPSC's requirements. Industry's argument to the contrary would freeze CR packaging requirements based on the packaging technology that was available 25 years ago. This would require Congress to rewrite the PPPA to account for engineering advances that now allow packages to be both highly child-

[9] The revised protocol adopted by the Commission contains more conditions for participation by adult panelists than does the original protocol. The revised protocol requires that the participants shall: (1) ''Have no obvious or overt physical or mental disability''; (2) have no ''permanent or temporary illness, injury, or disability which would interfere with his/her effective participation''; (3) be able to open and close two types of non-CR packages in a 1-minute screening test; and (4) read and sign a consent form. § 1700.20(a)(3) (i) and (iii). Persons with disqualifying disabilities, whether caused by advanced age or other factors, are disqualified as test participants. This adequately guards against any arguable limitation imposed by section 4 that the panel not consist of elderly people unable to use special packaging.

[10] S. Rep. No. 91–845 at 9 (1970).

[11] 36 FR 22151, 22152. The group that developed the original protocol similarly expected that there would be regulatory changes in the future based upon experience and advances in CR technology. This joint industry-FDA committee was led by Dr. Edward Press, who expected that the standard would ''be improved, revised, [and] expanded within a year or two.'' [295, p. 65] He further foresaw ''that, as new data become available, the [FDA, now the Commission] will establish standards which may differ from those recommended by the [Joint Industry-FDA] Committee.'' [295, p. 111]

resistant and not difficult for normal adults of all ages to open. It is illogical and inconsistent with the statutory framework and its legislative history to think that Congress intended that result.

6. The current rule does not adequately measure difficulty for normal adults; a test using senior adults is better for this purpose. Whatever the boundaries of the category of normal adults (discussed above), the present test with a panel of 18 to 45 year-olds is, at best, a poor measure of whether the packaging is not difficult to use properly. What the test measures is whether, in the 5 minutes allotted time, at least 90% of the panel members can open and, if applicable, properly resecure the packaging. The fact that a person can open a package does not mean that he or she does not find it difficult to do so. Moreover, 5 minutes is probably a much longer time than most adults, even those 18 to 45 years old, will spend attempting to open a package.

The Commission's data show this to be the case. As noted above, from 22 to 64% of persons of ages 18 to 45, depending on package type, found typical CR packaging ''difficult'' to open. [27, 28] No one disputes that, whatever the outer boundaries of the category of ''normal adult'' may be, it surely includes adults of ages 18 to 45 with no overt physical or mental disabilities. Thus, the available data show that much of the currently available CR packaging is difficult for ''normal adults'' to use, even if (as some commenters argued) that term included only the most capable portion of the adult population. Thus, typical CR packaging fails to accomplish the statutory objective, and the Commission is fully justified in changing the test protocol to eliminate difficult-to-use packages from the market.

The present protocol fails to enforce the ''not difficult'' requirement because it tests only whether 90% of the most able half of the population can use packages. The options to address this flaw in the current protocol are few. One alternative would be to survey the adult test participants to see if they found the package not difficult to open. According to the Commission's Human Factors Division, however, this option would make the test less objective and verifiable, and would increase the variability of the results.

The older adult panel retains the ''can use'' criterion that is more objective and verifiable. According to the Commission's Human Factors staff, the ''seniors-able-to-use'' criterion is a reasonable surrogate measure for ''difficulty of use'' in at least a substantial proportion of the population. The requirement for packaging that older adults can use virtually guarantees that CR packaging will not be difficult to use for substantially larger segments of the ''normal'' adult population than in the past, including those 18–45 year-olds who consider traditional CR packaging ''difficult'' to use. Thus, even if people age 50–70 were not ''normal adults'' (and they are), the ability of these older persons to open packaging is a more reasonable surrogate for ''lack of difficulty'' in younger adults than is the present adult test.

As discussed below, the Commission has changed the age range of the adult panel from the proposed 60–75 to 50–70 in the final rule. The Commission continues to believe that it would be lawful to use a panel of 60–75 year-olds. However, the Commission agreed to change the panel because the rule will still save children's lives and, as adopted, reduces the burden of compliance on the regulated industry.

Gender Distribution

A commenter indicated that equal numbers of males and females should be tested, and not the 70% females that was proposed and that is in the current adult test, because children are allegedly exposed equally to products used by males and females. The gender ratio was maintained for the senior test because child care activities are still predominantly performed by females, both in the home and elsewhere. More important, differences in strength between males and females persist in older age groups, and it is appropriate to shift the test sample toward users who represent the lower limits of strength-based performance.

Age Range of Participants

Some commenters claimed that the adult panel should represent the ages of grandparents, who have a mean age of 51 years old. The purpose of the senior test is to provide CRP that can be used without difficulty by a larger portion of the population than packaging that has been available for the past 20 years. The age range for the adult test was not chosen as a representation of the ages of grandparents.

Other commenters requested that the 71–75 year age group be dropped due to variability. Any greater variability of results for people in this age group could be compensated for by allocating a larger portion of the sample to the 71–75 year-old participants and weighting their results so that age group is not overrepresented. However, this point is moot because the Commission decided to adopt a panel of 50–70 year-old adults.

After the most recent comment period, the Commission reexamined its data on tests performed in the 1980's on persons between the ages of 18 and 75. Briefing package, May 25, 1995, Tab G. In those tests, all the packages that scored over 90% with the 61–75 age group also did so with the 51–70 age group. Similarly, all the packages that scored below 90% with the 61–75 age group also did so with the 51–70 group (although one package scored about 85% with the 61–75 age group and just under 90% with the 51–70 age group). Overall, the performance of the 51–70 age group was closer to the 61–75 age group than it was to the 18–45 age group. This was especially so for the packages that older adults found were the hardest to open. For example, the two hardest packages scored 95.3% and 92.5% when tested with the 18–45 group. However, they respectively scored 76.3% and 76.0% with the 61–75 group and 79.8% and 76.8% with the 51–70 group.

These test results indicate that there is a substantial safety benefit associated with using an adult test panel made up of persons of ages 50 to 70, compared to using the present adult test panel of 18–45 year-olds. It is possible that some borderline packages that would fail with the 60–75 age group would pass with the 50–70 age group. However, it is unlikely that this would occur with the hardest-to-open packages that have been marketed previously and that are of the greatest concern to the Commission. The Commission concludes that such hard-to-open packages can be eliminated from the market by a test using either 50–70 year-olds or 60–75 year-olds.

The Commission believes that the required statutory findings—that packaging meeting the standard is technically feasible, practicable, and appropriate for the substances for which it is required—can be made with either a 50–70 year-old panel or a 60–75 year-old panel. However, adopting the 50–70 age range could reduce the burden on industry in complying with the rule. And, the Commission believes that a panel of 50–70 year-olds, like a panel of 60–75 year-olds, will reduce the misuse of CRP. Accordingly, the Commission decided to accommodate industry's requests, and incorporated the 50 to 70 age range for the senior adult test panel in the final rule.

Test Should Reflect the Age of Users of the Product

Several commenters argued that the ages of the test subjects should reflect the ages of the consumers using the

individual products. What these commenters suggested would result in different test populations for different products. None of the products regulated by the PPPA are restricted from being purchased or used by the population in general. Furthermore, the same type of package also is often used for different products. These commenters did not indicate how the ages of the consumers who use the products would be determined, and, if adopted, this suggestion would be a never-ending source of dispute and uncertainty. Thus, the Commission will use the same test population and test procedure to define child-resistance and senior-adult use effectiveness for all regulated products.

Screening Test

Some commenters requested modification of the screening test so that the packages used for screening participants are similar in size, type, and weight to the package being tested. The purpose of the screening test is to ensure that the participating seniors have some baseline ability, including the ability to read, to sign a consent form, and to open two types of non-CR packages. It is unnecessary to change the screening test with each type of package. Therefore, the screening procedures of the senior protocol remain as proposed.

Age Groups

Several commenters requested that the 60–64 and 65–70 age groups be combined to decrease the testing burden. CPSC staff analyses indicate that there was not a significant difference in performance between the 60–64 age group and the 65–70 age group for the package types tested by CPSC, as reported in the March 1994 proposal. [187, 188] This was verified by data submitted by ASTM's Institute for Standards Research (''ISR'') involving senior adult testing of two packages at four different testing agencies. Because there is no significant difference in performance between these two age groups, it is reasonable to reduce the testing burden by combining the two age groups. Therefore, the final rule specifies that sampling be done so that, for each panel, 50 persons are selected for the 60–70 age group.

However, the currently available data do not support the conclusion that adults in the upper and lower ends of the 50–59 age range will perform similarly to one another. Accordingly, as explained in section II(B) of this notice, 25 persons are selected for each of the 50–54 and 55–59 age groups to reduce the practical effects of any lack of homogeneity in the 50–59 age group.

Eliminate Participants Who Stop Trying

Another commenter suggested that participants be eliminated from the test if they stop trying less than 2 minutes into the 5-minute test period. This would introduce a bias towards a package passing by eliminating participants who cannot operate it within 2 minutes and cease trying. The sample of adults would be skewed toward those who are most capable and/or most persistent. This comment was rejected because persons who quit trying in a test situation are likely also to do so in real life. These persons thus probably are the most likely to misuse CRP. Thus, adopting this suggestion could significantly reduce the beneficial effect of the rule.

Number of Tests Per Participant

Several comments were received regarding the number of tests in which a senior may participate. Commenters requested clarification of the CPSC's position on this point. The March 1994 proposal states, in the test instructions for the senior test, ''No adult may participate in more than two tests. If a person participates in two tests, the packages tested shall not be the same ASTM type of package.'' Some commenters requested that the term ''per sitting'' be added to the first sentence of this instruction to avoid an implication that no person could test more than two packages in a lifetime. Another commenter proposed adding the language ''in a 24-hour period'' to the statement.

The purpose of the statement is not to limit testing individuals to two packages per lifetime. The statement in the test instructions is meant to eliminate any effects of continuous testing using the same people, who may tire, gain expertise, or otherwise perform differently after testing several different packages. The term ''per sitting'' does clarify the intent of the restriction and has been added to the adult-test instructions.

One commenter indicated that since adults have had a lifetime of learning how to open CRP, subsequent testing at another time is not a concern. The Commission has concerns about repeated testing by individuals and the potential for abuse. The Commission does not intend that the same participant have multiple ''sittings'' within a short period of time. The Commission does not intend that a panel of people be in effect trained to open packaging.

Neither does the Commission intend that test participants be drawn from a ''pool'' of experienced test participants. There is the potential that people who have failed in the past will not consent to be tested again, thus creating by default a panel of able participants, who bias the test results. This potential exists if testers go frequently to the site where the same people are likely to be found. Although the length of time between testing needed to ensure that these sorts of problems do not occur is unknown, the Commission recommends against testing at sites containing a defined group more than 3 to 4 times a year.

The potential for abuse could be partially eliminated by specifying a time period between testing the same individual. However, it is difficult to identify the proper length of time between tests. In addition, it would be impossible to measure compliance with such a requirement, unless participant data bases and reporting were also required. It was also suggested that the participant, rather than the test agency, be responsible for the frequency of testing. It was suggested that this could be done by including a statement on the consent form, such as ''I am between the ages of 50 and 70 and, to the best of my knowledge, I have not tested a child-resistant package within (insert a time).'' This would place an additional and unnecessary burden on the participants. Also, there are no data showing that participants would have a sufficient recollection of the time since they were last tested to make this a practical way to deal with the problem.

Sites

Several comments were received regarding the sites used for testing. The proposed rule states that no more than 24% of adults should be tested at any one site. This would require that a minimum of five sites be used. Commenters requested that the number of sites required be lowered to four.

In the March 1994 proposal, the Commission analyzed the sites grouped together by geographic area (3 digit zip code), not by the zip code of the participants, as many of the commenters stated. [187, 188] The sites were grouped together geographically because there were inadequate numbers of participants tested at each site for any meaningful analysis of site variability. This geographic analysis showed that there was no variability among the groups of sites in CPSC's tests, which all used the five-site minimum. There are no test data on the effect on test results of decreasing the required number of sites. Accordingly, there is no basis for

reducing the number of required sites from five to four.

Another commenter suggested that the definition of site be changed from a location to a group of panelists at a specific location under a group name. The commenter stated that test results could differ dramatically between different groups of people based on the characteristics of a group and not the actual location of the group. This comment would allow testing at only one geographic site if a sufficient number of different groups were tested.

Defining a site as a group of people would limit testing to defined groups, such as a bridge club or a senior citizens meeting on a particular day. This would eliminate sampling from a mall or other area where people are not congregated for a central purpose. There is no information on how this change would affect test results. The Commission concludes that by selecting a variety of geographic sites there is a likelihood that senior adults will be selected with diverse interests and backgrounds.

Another commenter requested that central location testing be permitted as long as adults were not drawn from the same geographic area. This commenter submitted data indicating that selecting senior adults from large central locations, such as shopping malls, can result in geographic diversity, as measured using residential zip codes. CPSC staff agrees that large central locations can provide geographic diversity in the selection of subjects, and that this type of diversity is desirable. However, there is no information on whether the use of large central locations has an effect on actual test data. Factors other than geographic diversity may be important. By selecting a variety of sites, there is a likelihood that senior adults are selected with diverse interests and diverse backgrounds. Therefore, the Commission concludes that senior testing should continue with the requirement of a minimum of five test sites. However, the Commission's consent forms are being amended to collect information about participant's residential zip code, so this suggestion can be evaluated in the future.

Sequential Test

Several comments were received about the proposed sequential test and about its alleged effects on the standards for passing the senior test. Several commenters complained that the CPSC increased the stringency of the test since, with the sequential adult test, a SAUE of 0.951 would have been required to pass after testing the first panel of 100 seniors. The proposed sequential test would not have increased the test's stringency, however, since the pass/fail criterion would have remained 0.900.

The main advantage of a sequential test would be to increase the probability of making the correct pass/fail decision for those packages that perform in the ''borderline'' (near 0.900) range. This is accomplished by increasing the number of people tested for borderline packages. Thus, the sequential test would have required testing more adults for packages that perform near the 0.900 pass/fail criterion.

However, borderline packages are not the hardest-to-open packages that are of the greatest concern to the Commission. The Commission believes that the hardest packages to use will be eliminated by a panel of 50–70 year-olds, even without a sequential test.

Therefore, the Commission believes that it can use nonsequential testing, which may reduce the burden on industry, without compromising the safety benefits of the rule. Accordingly, both the senior- and younger-adult tests will use a single 100-member panel.

Senior Consent Forms

Several commenters requested that the actual language of the adult consent form be included in the rule to further standardize the test. It was also requested that different forms be used for reclosable and non-reclosable packages, that participants be told about the time limits of the test, and that participants be informed that they may be asked to open other types of packages (i.e., those used for screening purposes).

The Commission agrees that the consent form should be standardized; the consent forms used in Commission testing are now included in the rule as a recommended example. In current testing, separate forms are used for reclosable and non-reclosable packages. In addition, language about the potential to be asked to test screening packages has been added to the consent form.

However, the Commission disagrees that participants should be advised of the time limits of the test (e.g., ''you have 1 minute''). Time pressure is a potentially influential factor, and emphasizing a time limit may induce anxiety unnecessarily among participants.

Instructions

Comments were received that the sample preparation sections of the child test and the senior test were not consistent. The Commission agrees and has modified § 1700.20(a)(3)(iv)(A) of the senior test.

Several requests for further standardization of the instructions were received. Commenters requested standardization of the commands to participants in the screening test to reflect what is said in the regular test. Some commenters also indicated that standardized language should be added to the procedure to help confirm whether a participant has given up. The Commission agrees with these changes and has amended the test procedure in § 1700.20 to include additional standardized language.

E. Effectiveness of the Senior Protocol—Safety v. Convenience

A number of commenters attacked the basic premise of the revisions, that easier-to-open packages will result in increased proper use of CRP by adults and that this will increase the safety of children. Some commenters cast this argument as follows: If (as the commenters contended) the rule does not increase safety, it perforce addresses only convenience and is not a proper subject for a Commission regulation.[12] However, the information in the record indicates that the senior-friendly adult test will have significant safety benefits and will not compromise child-resistance.

The Rule Will Cause Beneficial Changes in Adult Behavior

Large numbers of adults are currently relegated to using non-CR packages because of the difficulty in using traditional CR packages. For example, CPSC test results show that up to 44% of 61–75 year old adults could not open CR packages that pass the current protocol. [37] However, under the revised protocol, these adults will be able to use CR packaging and thereby reduce the risk of accidental poisonings.

The likelihood that people will defeat a safety measure through error, misuse, or avoidance increases with the degree of actual or perceived effort and inconvenience required to use the measure. [234, 287] This is evidenced by the current problems with CRP, i.e., difficult-to-use containers often are used improperly or not at all. Conversely, research findings indicate that when the degree of effort or inconvenience associated with safe behavior is reduced, the likelihood of compliance increases. [287]

The protocol revisions directly address the capability of the general population to use a given type of CR package by requiring that at least 90%

[12] Given that the Coalition for Responsible Packaging, which represents the proponents of this argument, now endorses the rule as adopted [299], it appears that these claims no longer apply.

of test participants of ages 50 to 70 be able to use them. Recent test results with older adults showed that 95% to 99% of the 60 to 75 year-olds sampled were able to use the newer types of reclosable packages tested. [195] Furthermore, the majority of participants rated the packages ''easy to use.'' [195] Similar results were obtained for non-reclosable packaging. [194] These results would almost certainly hold or be even stronger for the 50–60 age group.

The Commission concludes that packaging that older adults can use, and which they perceive to be easy to use, has a higher likelihood of being used correctly by the general population than packaging they cannot use, or which they perceive to be difficult to use.

The Revised Protocols Will Not Compromise Child Safety

Several commenters argued that the proposed changes will lead to a reduction in child-resistance. Their argument is that packages that currently pass at, e.g., 95% CR effectiveness may be replaced with packages that pass at a lower effectiveness after the revised protocols are adopted. However, the Commission's tests of senior-friendly packages have shown that packages which are easier for senior adults to open need not be easier for children to open. Child-resistance effectiveness levels with the reclosable senior-friendly packages tested by CPSC varied from 97% to 100%, which are as child-resistant as the most effective of traditional CR packaging. [195]

One commenter submitted graphs depicting test data purportedly showing that modifications to CR packaging to make them more adult accessible result in less child-resistance. [275, 278] The commenter did not identify the packages tested, describe in detail the changes that were made to the packages, or provide the raw data for the tests. Indeed, for two of the five graphs purporting to reflect industry testing, no backup information was presented. The Commission cannot determine for any of the graphs whether the appropriate protocol was adequately followed or whether the effectiveness scores were calculated properly.[13] The failure to provide these data makes it impossible to make a thorough or meaningful assessment of this commenter's submission.

Moreover, two of the five packages in these graphs purportedly scored at least 96% in both the child and adult tests. Thus, the limited information supplied by this commenter shows, at most, that some packages may need further modification or may need to be replaced with commercially available packages having both high adult-effectiveness and high child-resistance.

Another argument raised by these commenters was that each percentage point of reduction in true child-resistance would result in a potential 32 million product failures. This figure apparently was obtained by dividing 100 into the estimated 3.2 billion CR packages produced each year. This argument overlooks the fact that even a package for which child-resistance has been slightly reduced to make it easier for adults to open will still be far more child-resistant than one where the cap has been left off or loose because it was difficult to open. A package that is not child-resistant or that is misused is less than 9% child-resistant, versus at least 80% child-resistant for packages that pass the protocol.[14] Thus, each additional unit that is purchased in CR packaging and used properly because it is less difficult for adults to use can be over 10 times more child-resistant than non-CR packaging or misused CR packaging.

The Commission is unable to quantify the number of poisonings that will be prevented by the new rule, and such a calculation is not statutorily required. However, the record evidence—including survey data, human factors analysis, and other information—indicates that this rule will increase the proper use of CR packaging, reduce injuries, and save children's lives.

One commenter argued that persons who start using CR packaging because it is easier to open may let their guard down and not be as vigilant about keeping the products out of the reach of children. The commenter claimed that this will result in increased poisonings. However, it is speculative whether caregivers will likely get a false sense of security if they switch from non-CR packaging to CR packaging. And, the Commission is not aware of any evidence that this occurred when CR packages were first introduced.

Because no CR packaging is childproof, it will always be important to endeavor to keep hazardous products out of the reach of children. Although it may well still be important to educate people about the need to keep hazardous products away from children, the rationale for the PPPA is that education alone is inadequate to address the problem of accidental childhood poisonings:

> Efforts at public education are based on the premise that poisonings are caused by parental negligence and that poisonings can be prevented by stimulation of greater parental care. The Committee, however, believes that parental negligence is not the primary cause of poisonings. There are too many potentially hazardous products in the modern home to hope that all of them can be kept out of the reach of children. Special packaging will accomplish what previous efforts have not b[y] attempting to create positive separation between young children and hazardous substances. Special packaging is intended simply to make the environment of young children safer.
>
> S. Rep. No. 91–845 at 3.

Finally, the Commission has addressed through discretionary enforcement stays the possibility that a manufacturer may have difficulty maintaining the child-resistance of packaging while complying with the new protocol. Specifically, as discussed below, one of the grounds for such stays is that more time is needed to develop CRP that will meet the new protocol and not significantly reduce the child-resistance of the package.

The Commission May Issue Safety Rules That Improve Convenience

One commenter also argued that the Commission could not issue the proposed rule because an ease-of-use regulation, even if it had a safety rationale, would not be a ''safety standard'' under the Consumer Product Safety Act (''CPSA''). As an example, the commenter claimed that the Commission could not use the CPSA to issue a convenience standard for lawn mowers.

The fact that the PPPA contains a specific ease-of-use requirement (that the packaging be not difficult for normal adults) is sufficient to refute this contention, regardless of what might be done under the CPSA. As regards the example of lawn mowers, however, the Commission's Safety Standard for Walk-Behind Power Lawn Mowers (issued under the CPSA), actually does contain a safety provision linked to convenience. See 16 CFR 1205.5(a)(iv). Thus, even under the CPSA, the Commission may issue standards fashioned to ensure safe behavior by consumers, even if that standard addresses the ''convenience'' of a safety feature.

Market Forces Have Failed To Eliminate Difficult-To-Use Packaging

Finally, a number of commenters argued that ease of use would be best

[13] The Commission previously received another industry comment in which the SAUE scores were all calculated incorrectly, assuming the age group proportions were correct.

[14] Wilbur, C.J., ''Closure Testing Equipment Studies, Status Reports, Non-Child Resistant, Snap Type Packaging and Continuous Threaded Type Packaging, CPSC,'' CPSC Directorate for Health Sciences (March 1990).

addressed by market forces. However, in the 20-plus years the PPPA has been in effect, there has been only minimal market penetration by packages thought to meet the new protocol.

At the presentation of oral comments, a commenter argued that it would be different in the future now that senior-friendly packaging that is highly child-resistant has been introduced to the market. He explained that as soon as other companies developed such packaging, they would be forced by competitive forces to use it. The commenter presented no data or evidence to support this optimistic scenario.

There is no reason to believe that, in this case, large segments of the market will make needed safety changes unless such changes are mandatory. For the most part, industry has shown no willingness to spend money and time voluntarily to make significant improvements in the performance of CR packages. Consumers may not even realize that easy-to-use packaging can be produced. Also, consumers can purchase packaging without a CR feature, and consumers have ''solved'' the problem of difficult packaging by leaving caps off or loose or putting the contents in another container.

Many packaging manufacturers are apparently reluctant to make a substantial capital investment to produce easier to open packaging that will then have to compete with established lines. As a CR package manufacturer stated in commenting on the proposed rule:

> [A]s long as we don't encourage manufacturers to produce good, effective child-resistant closures, they will never get around to doing it. And as long as we continue to allow these so-called child resistant products that require force or tools to be acceptable, no one can get on the market with a good child-resistant closure. It would be foolish for any individual or company to invest millions of dollars when that type of competition is present and allowed.
>
> [Comment CP1–91–1]

Indeed, at the oral hearing, another commenter stated that interest in a new aerosol package he is developing decreased by 50% over the 2 months since the Commission had excluded aerosol packages from the rule. [273, p. 104]

In short, there is no basis in the record to conclude that market forces will ensure the adoption of senior-friendly CR packaging.

Education

One commenter stated that a carefully designed and executed education program has the potential to reduce childhood poisonings far more than changing the test protocol for CRP. Other commenters concluded that the problem is one of adult responsibility; they contend that education of the senior population is as important as, or more important than, package changes.

The Commission agrees that education efforts will be a necessary concomitant to the revised standards to publicize the availability of easy-to-use packaging and to remind people about the importance of keeping hazardous products out of the reach of children. However, education is unlikely to solve this problem as effectively as changes in available packages. As noted above, in adopting the PPPA, Congress recognized that education alone could not solve the problem of accidental poisonings of children. S. Rep. No. 91–845 at 3. Certainly, education alone cannot address the issue of adult responsibility for the adults who cannot use some of the CRP currently on the market. Participation by the industry in this type of education campaign is welcomed by the Commission.

F. ISR Testing

The Institute for Standards Research (''ISR''), a subsidiary of the ASTM, sponsored tests to measure the interlaboratory variability expected when conducting CR package tests according to the proposed protocols. The ISR testing program involved testing two package types, ASTM Type IIA (lug) and Type VIIID (blister), by four different testing agencies. Four senior panels were run at each agency for each package.

Both the ISR and the ISR project manager commented on the results of the ISR testing and on the comparison of the ISR results with those obtained from CPSC-sponsored testing conducted by a single testing agency. [210, Refs. 17 and 35]

In the CPSC-sponsored testing of each of these two package types, a pass determination was made within the first three test panels, regardless of the order in which the panels were considered, indicating that the probability of these packages ever failing was very low. [187] The same results were obtained in the ISR-sponsored testing. Additionally, no package tested in either CPSC-sponsored or ISR-sponsored testing had a calculated effectiveness below 90% for any test panel, indicating that no package was ever close to failing the senior adult test. [187, 230]

The ISR noted that there was a statistically significant difference in the senior-adult use effectiveness among agencies for the lug package. [210, Ref. 17] A high pass rate for the lug package at one testing agency was responsible for this conclusion. [230] The reason for this difference is unknown. It may be because the ISR study was not standardized sufficiently at the various testing agencies, so that the study was conducted differently at one testing agency from the way it was conducted at the other testing agencies. [230] Since CPSC staff did not observe the actual testing, there is no way for the Commission to determine if this was the case. In any event, however, the results of the ISR-sponsored testing verified the proposed CPSC test method.

G. Household Chemicals

Several commenters requested that household chemical products be regulated separately from pharmaceutical products. Commenters argued that household chemical products should be excluded from the proposed test method because the CPSC allegedly has not demonstrated a significant rate of serious personal injury or illness from poisoning incidents where CR closures were left off household products by the elderly. Commenters also claimed that the Commission inappropriately generalized NEISS data pertaining to injuries to children in the pharmaceutical category to all regulated household products within its jurisdiction, including chemical specialty products.

These commenters are referring to a study conducted from NEISS cases that investigated poisonings from only pharmaceutical products. [112] While the Commission has no comparable data on household chemicals, the Commission is aware of ingestions and deaths of children from PPPA-regulated household products. Household chemicals regulated under the PPPA include oven cleaners, furniture polish, turpentine, kindling and illumination preparations, ethylene glycol, solvents for paint or other similar surface-coating materials, glue removers containing acetonitrile, and permanent wave neutralizers containing sodium bromate or potassium bromate. The CPSC staff monitors ingestions and deaths from these products. (If cleaning products are registered pesticides, they are regulated by the Environmental Protection Agency and not the CPSC.)

Many specialty cleaning products are toxic following ingestion. One published article calculates hazard factors for household products through an analysis of data from the American Association of Poison Control Centers (AAPCC) pertaining to reported exposures of children under 6 years of

age. [230, Ref. 6] A hazard factor was derived from the number of serious exposures for a substance, normalized to the overall rate of major effects and deaths.

Hazard factors for many of these products, including acid and alkali drain cleaners, alkali oven cleaners, and ethylene-glycol-based products, were found to be significantly higher than the hazard factor for all other reported cases, despite the fact that CRP is already required for these substances. Thus, children are exposed to these toxic household chemicals.

It is expected that CRP capable of passing the senior adult test will be easier for adults to use correctly, and the availability of such packaging will encourage adults to purchase the products in CRP and properly use the packaging. It seems particularly important to make such a requirement for these household products, because data submitted by one commenter showed low senior-adult test scores for household chemical products. Senior test data submitted by this commenter for 12 different packages showed that 10 packages had senior effectiveness below 90%. Two packages had senior-effectiveness below 50%. [210, Ref. 15] Since many of the household chemical products are quite toxic, it is reasonable to require that such products be in CRP that adults are capable of opening and resecuring properly.

The majority of packaging for household chemicals (approximately 65%) uses the same CRP types used for pharmaceutical products. [233] For these products, it is just as feasible to provide improved CRP for household products as it is for pharmaceutical products. For the remaining household products, primarily products in metal cans or aerosol dispensers, there are no test data demonstrating that currently commercially available packages are senior-friendly.

Senior-friendly packaging may be developed for metal cans, especially if the cap is designed for the use of a tool to aid in opening. A tool is especially useful for this application since the caps for products in metal cans often are applied initially with a high torque to prevent leakage during shipment. After the initial opening, the option for a tool is available if needed. The Commission is aware of one promising prototype of a cap for metal cans that has senior-friendliness as a design goal. [213, 245, 251] Any applications that use both a metal can and a metal closure would probably take the longest to develop and implement senior-friendly packaging. [232, 240]

As to aerosols, various types of senior-friendly overcaps show promise. [232, 240] In addition, designs that use a tool to remove an overcap may be developed. [170, 183, 232 Ref. 15, 240 Ref. 11, 248] There is an existing design that places the aerosol actuating button in a narrow recess that is deep enough that the button can be reached by an adult's finger, but not by a child's. [240 Ref. 12, 261] Another design uses an annular ring that is mounted around the aerosol can so that it can rotate but is not removable. [256] The overcap screws into the upper portion of the rotatable ring. If one holds the body of the can and tries to unscrew the overcap, the ring rotates and the overcap will not unscrew. To remove the overcap, the ring must be held so it does not rotate while the cap is being unscrewed. Although both of these designs are promising, the Commission does not know whether they have been subjected to either the child or senior-adult tests.

The Commission concludes that there are currently a substantial number of ingestions by children of household chemicals and that a significant portion of seniors cannot open and resecure existing packages. Thus, improving the packages will reduce the likelihood that the CR package will be defeated or not resecured. Therefore, the Commission decided to include household chemicals as a group in the requirement for senior-friendly packaging.

Nevertheless, as noted above, aerosols and metal packages with metal closures are likely to take the longest time to implement senior-friendly packaging, and to present the most difficulties. Excluding these two types of packaging from the revised requirements at this time will also reduce the potential competition for the services of testing organizations during the 30-month period before compliance with the revised adult test will be required for other products.

The Commission's technical staff believes that senior-friendly packaging for all products, including those in metal containers and in aerosols, can be produced eventually. Nevertheless, excluding products that require metal or aerosol containers from the revised requirements will enable the Commission to monitor the further development and testing of these limited types of packaging before making any subsequent decision about whether or not to require such packages to be senior-friendly.

Accordingly, the Commission concludes that products that must be packaged in metal packages with metal closures, or in aerosols, will not be subject to the senior-adult test that is issued below. However, the Commission will monitor the development of senior-friendly versions of these types of packages and revisit this issue at a later time. These metal and aerosol containers will be subject to the revised child test and will remain subject to the current younger-adult test. All other products presently subject to special packaging requirements under the PPPA will be subject to the revised child and senior-adult requirements.

A product will be deemed to require metal containers or aerosol form if:

1. No other packaging type would comply with other state or Federal regulations,
2. No other packaging can reasonably be used for the product's intended application,
3. No other packaging or closure material would be compatible with the substance,
4. No other suitable packaging type would provide adequate shelf-life for the product's intended use, or
5. Any other reason clearly demonstrates that such packaging is required.

In the absence of convincing evidence to the contrary, a product shall be presumed not to require a metal container if the product, or another product of identical composition, has previously been marketed in packaging using either a nonmetal package or a nonmetal closure. If requested by the Commission's staff, the manufacturer or packager of a product packaged in a non-senior-friendly metal or aerosol container will provide a justification of why, under the criteria specified above, the product requires such packaging.

H. Comments on Statutory Findings

Many commenters claimed that the Commission did not have sufficient information to make the statutory findings that technically feasible, practicable, and appropriate senior-friendly CRP is available for all substances regulated under the PPPA.

Some commenters seem to believe that in order for a package to be technically feasible, practicable, and appropriate, it must be commercially available. This is not the case. These findings mean that senior-friendly CR packages can be made and mass produced that are compatible with the substances to be packaged. The CPSC presented data in the March 1994 **Federal Register** notice on many different packages that are commercially available and have passed the senior-friendly protocol. In addition, closure manufacturers have indicated that other types of senior-friendly packaging can

be developed. Manufacturers and packagers may also consider alternative packaging. The lack of commercial availability of a closure for a particular specialty package does not mean that a closure cannot be developed for that package or that other packages would be inappropriate for the product. A detailed discussion of the Commission's findings is in section V of this notice.

I. 1-Year Effective Date, Blanket 18-Month Exemption from Compliance, and Additional Temporary Stays of Enforcement

In the October 5, 1990, **Federal Register** notice, the Commission proposed 1 year after promulgation as the effective date for the proposed senior-adult test. This is the longest effective date authorized in the PPPA. The Commission requested information about the economic effect of the effective date.

Alternatives to a 1-Year Effective Date

Commenters voiced concern about the limited availability of testing firms and senior-friendly packaging in the proposed 1-year period. The commenters suggested alternative approaches, including grandfathering existing CRP, phasing-in by product class, phasing-in by package type, and corporate averaging. Commenters also requested the formation of a CRP conversion task force for determining appropriate effective dates. Another commenter requested that the Commission issue a compliance policy guide.

1. Grandfathering existing CRP. If adopted, this comment could negate the objective of the regulation, which is to ensure that currently marketed hard-to-open CRP is removed from the market. The objective of grandfathering for a limited period of time is achieved by the 18-month blanket exemption from compliance being provided by the Commission. This is discussed in more detail below.

2. Limited testing facilities. Commenters argued that there is insufficient capacity for testing CRP to enable all products to be tested in time to comply with a 1-year effective date. Although the current capacity of testing organizations may be insufficient to provide enough tests of CRP to ensure that all products can be tested and senior-friendly packaging implemented within 1 year, these firms do plan to increase their capacity as much as possible to take advantage of the increase in demand for their services.

In addition, the revised procedures are specified in enough detail that some manufacturers and packagers could conduct their own tests for compliance with the revised protocol. This was shown by the ISR tests, which used one laboratory that had no previous experience in conducting CR package tests. Also, it is expected that additional testing laboratories will form to meet this need. The CPSC's staff has had many inquiries from marketing groups and universities interested in providing testing services.

The Commission's 18-month exemption from compliance, discussed below, also will accommodate delays caused by any lack of appropriate test facilities.

3. Phase-in by product class. Many commenters suggested that the revised requirements be phased in by product class. Various suggestions were made as to which product classes should go first.

The Commission does not agree that this phase-in approach is an efficient way to obtain the most complying CRP in a short but reasonable time. In most product categories, some packaging has been developed that will comply with the revised protocol. Thus, regulating by product class would have given many companies more time to comply than is necessary.

4. Phase-in by package type. Another option suggested for a phase-in approach was to phase in by package types. The Commission did not adopt this approach, because it could have unnecessarily delayed use of senior-friendly packaging. If a package design truly presents unusual problems in complying, the procedure for temporary stays of enforcement can be used.

5. Corporate averaging. One commenter stated that corporate averaging would be an appropriate system for phasing in the effective date. A specified percentage of a company's products would have to comply with the new regulations by a specified time, and the rest of its products would be phased in by percentage over time.

The Commission does not believe this would be an efficient way to implement the regulation. Many companies use only one type of packaging, and additional time is not necessary. Also, the Commission would be unable to monitor compliance with the regulation since the CPSC would not know what particular products or packages should comply. Even if industry undertook to keep the Commission fully advised, the burden on both industry and the Commission would be enormous.

6. Task force. One commenter suggested that a task force, consisting of CPSC staff, industry, closure suppliers, and testing agencies, determine compliance time frames. The Commission rejected this approach as impractical and unnecessary. No procedure was described to resolve disagreements on such a task force or to insure that the public interest would be adequately represented. Furthermore, there is no mechanism to enforce the determinations of a task force except the time-consuming one of additional rulemaking proceedings by the Commission.

7. Compliance policy guide. One commenter requested that the Commission issue a compliance policy guide (''CPG'') concerning its enforcement of the new standards. The commenter suggests that the Commission develop a policy statement which establishes criteria by which a manufacturer would be considered to have demonstrated a good faith effort to comply with the standards. CPSC then would not take action against packaging not meeting the standards if the manufacturer had satisfied the criteria specified in the policy.

This CPG approach is less practical than the procedure for an 18-month compliance exemption. Rather than trying to anticipate all the possible ways in which a good faith effort could be thwarted, it will be much more efficient to deal with such situations through a time-limited exemption, followed by additional individual temporary enforcement stays, where justified.

None of the approaches suggested by the commenters provides an efficient method to obtain the largest amount of senior-friendly packaging on the market in the shortest reasonable time. The Commission estimates that most products subject to the requirements could comply within 1 year. However, as discussed below, an 18-month compliance exemption is established to address many of the cost factors involved in a 1-year effective date.

8. Exemption from compliance. The PPPA requires that the effective date of a regulation establishing a special packaging standard shall not be later than 1 year after the date that the regulation is final (*i.e.*, is published in the **Federal Register** as a final rule). Having found that designs of child-resistant packaging that meet the requirements of the revised testing protocol are technically feasible, practicable, and appropriate, the Commission has allowed the statutory maximum one year for the revisions to the testing protocol to go into effect. Data available to the Commission indicate that sufficient quantities of these designs could be manufactured within a year to meet the demand for packages that comply with the revised testing requirements.

The Commission recognizes that the revised standard may affect as many as 3 billion packages annually. This will require action on the part of closure manufacturers, as well as packagers of products subject to regulations, manufacturers of bottles and containers, mold manufacturers, and other firms involved in the packaging and distribution of products subject to PPPA regulations. In adopting these protocol revisions, the Commission wants to (i) minimize any commercial disruption, (ii) allow for a more orderly transition to packaging that complies with the revised requirements, and (iii) help assure that—consistent with the results of CPSC testing on certain currently available packages—any other new packaging designs or modifications provide ease of adult use without sacrificing child resistance. Therefore, the Commission is granting companies a blanket exemption from having to comply with the revised adult protocol for 18 months after it goes into effect. The exemption from the senior-adult requirement will apply only to products that comply with the younger-adult requirement.

The Commission believes that the additional 18 months will provide adequate time for affected firms to make any necessary changes to their packages or machinery, and to place orders for complying packaging in a timely manner that assures delivery well in advance of the effective date. The Commission also recognizes, however, that unique circumstances may arise that require additional time for individual firms to comply. The Commission will therefore also consider requests for additional reasonable enforcement stays after the expiration of the 18-month exemption.

The Commission, through appropriate staff, shall grant a request for an enforcement stay that demonstrates, based upon supporting information and documentation, (i) a good-faith effort to obtain packaging that complies with the revised standards during the period after publication of the final rule in the **Federal Register**, and (ii) compliance with one of the following criteria:

1. *Delay in Protocol Testing.* Protocol testing likely will not be completed within the time required to enable complying packages to be used by the applicable deadline. Estimated dates upon which testing will be completed and complying products will be produced shall be submitted. (Several protocol testing firms should be contacted to obtain the earliest completion date.)

2. *Product Testing.* Required FDA testing likely will not be completed within the time required to enable complying packages to be used by the applicable deadline. Estimated dates by which testing will be completed and complying products will be produced shall be submitted.

3. *Equipment.* Necessary manufacturing equipment will likely not be available within the time required to manufacture finished products in compliance with the revised requirements. The estimated date by which equipment will be in use and complying CRP will be produced shall be submitted.

4. *CRP Availability.* Where CRP is claimed to be unavailable, an explanation shall be provided of why currently available, alternative CRP cannot reasonably or practicably be used. An estimated date by which complying CRP will be obtained and produced shall also be submitted.

5. *Redesigned/New CRP: Maintaining Child Resistance.* Where a claim is made that CRP will have to be redesigned or developed, an explanation shall be provided of why commercially available packaging cannot reasonably or practicably be used. The rationale for a temporary enforcement stay under this provision may include, among other reasons, that more time is reasonably needed to develop a CRP that will meet the new adult protocol and not significantly reduce the child resistance of the package. An estimated date by which complying CRP will be obtained and produced shall also be submitted.

6. *Other.* Other substantial reasons demonstrating that additional time is reasonably necessary to comply with the amended protocol. An estimated date by which complying CRP will be obtained and implemented shall be submitted.

The Commission, through appropriate staff, shall issue a decision granting or denying the request for a temporary stay of enforcement within 30 days after receipt of the request and appropriate supporting material. All requests for enforcement stays, including any supporting data or information, for which claims of confidentiality are made, shall be considered confidential and exempt from public disclosure to the extent allowable by law.

J. Miscellaneous Comments

Carpal Tunnel Syndrome

Comments were received by groups representing pharmacists that requested that the Commission and manufacturers consider the need for a design of CRP that reduces the incidence of repetitive motion injuries, such as carpal tunnel syndrome, among pharmacists. Letters were received from pharmacists with carpal tunnel syndrome.

Carpal tunnel syndrome is caused by compression of the nerves in the wrist. It is associated with occupations that require repeated forceful wrist bending. Some of the pharmacists attribute their repetitive motion injuries to opening and closing certain designs of CRP.

The CPSC is prohibited by the PPPA from prescribing specific package designs, and the Commission is unaware of any performance test for CRP that would have the effect of reducing carpal tunnel syndrome. However, packages that are easier for seniors to use should be easier for everyone, including pharmacists, to use. The effect this will have on the development of carpal tunnel syndrome in pharmacists is unknown.

Exemption for Large-Diameter Packages

One commenter, a manufacturer of swimming pool chemicals, requested that large diameter packages, over 110 mm, be exempted from the senior test. The manufacturer provided test data on the packaging used currently by the firm. In all cases, the packages failed the proposed senior test.

It should be noted that this specific manufacturer makes products regulated by the Environmental Protection Agency (EPA) and not by the CPSC. The decision on whether to exempt this product thus will be the EPA's responsibility.

In general, however, the Commission does not believe that failing data on existing packages is reason enough for a permanent exemption from the revised protocol. The Commission believes that senior-friendly CRP for all CPSC-regulated products is technically feasible, practicable, and appropriate. Removing existing CRP from the market that cannot be used properly by the senior panel is the purpose of the revisions.

Need for Additional Comment

After the Commission voted to issue the revised protocol containing the older-adult test panel of 50–70 year-olds, an individual wrote to the Commission suggesting that the changes from the proposal should have been published so that those particular changes could be commented on by the public. The Commission does not believe such action is either legally required or sound policy. All the changes from the proposal are within the range of issues discussed in earlier **Federal Register** notices. Furthermore, the final rule is a logical outgrowth of the previous notices and the comments received in the rulemaking. Thus, an additional opportunity for public comment is not required and would significantly delay the substantial safety benefits of the rule.

IV. Economic Issues [236]

A. General

More than 20 categories of substances require special packaging.[15] These include oral prescription drugs; aspirin, acetaminophen, ibuprofen, and

[15] The substances are specified at 16 CFR 1700.14.

loperamide in OTC drugs; potassium and sodium bromates in permanent wave neutralizers; low-viscosity mineral seal oil and/or other petroleum distillates in furniture polish; and turpentine, sodium and/or potassium hydroxide, methyl alcohol, sulfuric acid and ethylene glycol in various household products. Product formulations include liquids, gels, solids, flakes, granules, and powders.

Oral liquid pharmaceuticals are either prepackaged by the manufacturer or pharmacy-dispensed using reclosable continuous-threaded (''CT'') closures. Some liquids are available in non-reclosable unit-dose packages. Most oral solid dosages (tablets and capsules) are either prepackaged in plastic bottles with CT or snap closures or are pharmacy-dispensed in vials with CR lug-finish closures. However, the number of solid dosage preparations that are prepackaged by the manufacturer in non-reclosable blisters or pouches is growing, according to an industry study from Leading Edge Reports.[16]

Household products are supplied in a greater variety of container shapes and in larger volume sizes than are drug preparations. According to commenters, approximately 65% of household products use styles similar or identical to those used for drug products. [233] CRP for household products include plastic, glass, fiberboard, and metal containers with plastic, metal, or combination metal/plastic closures or dispensers. CR closure styles include CT, overcap, and various specialty designs unique to a particular product/container. Some household products are supplied in single-use non-reclosable pouches or bags. Larger packages (5 gallons or more) of household substances are not required to meet special packaging requirements. (16 CFR 1701.3)[17]

Closures are seals or lids, typically made of plastic or metal. The closure and the container together make a package. Plastic CR closures (SIC 3089) make up only a small portion of the total closure market (CRP and non-CRP).[18] In 1991, 73 firms shipped 39.2 billion closures, of which only 3.0 billion units (8%) were CR. Prescription drugs accounted for 29% (0.9 billion) of CR closures, while the remaining 71% (2.1 billion) were used on ''All Other,'' a category that includes OTC drugs. Census data do not provide a breakout for OTC drugs and other products.

According to the Census Bureau, 14 of the 73 closure manufacturers ship CR closures for prescription drugs and 26 of the 73 ship CR closures for all other products. It is likely that the 14 manufacturers of CR closures for prescription drugs also manufacture CR closures for other regulated products (i.e., are a subset of the 26 other CR closure manufacturers). It is likely, too, that a substantial number of the CR closure manufacturers also produce non-CR closures and numerous other plastic products. Industry spokespersons estimate that the four largest manufacturers of plastic closures account for over 80% of the CR closure market.

Metal and metal composite closures are also available for use on products requiring CRP. However, they comprise an even smaller part of the market than plastic closures. The companies producing them are classified in SIC 3466, Crown and Closures. In 1991, 27 companies shipped an estimated 17.5 billion metal and metal composite closures. About 0.5 billion units (3%) were manufactured by 10 companies and used on medicine packages. Census data do not provide a breakout by use for CR metal closures.

Firms involved in providing the materials for non-reclosable packages (e.g., films, foils, and adhesive-coated paperboard backings) are a diverse group of suppliers of packaging materials and equipment. Their products are used by pharmaceutical and household product manufacturers for non-reclosable packages such as blister configurations and pouches that are fabricated at the time they are filled. Packages can readily be fabricated as CR or non-CR, depending upon the characteristics of the materials used.

The revised protocol will likely cause many changes in the packaging of products subject to the PPPA. The changes are both expected and desirable, since the widespread availability and use of senior-friendly packaging will help to minimize the number of accidental poisonings of young children. In the short run, however, achieving a more senior-friendly universe of CRP also will entail costs or other effects to industry. The Final Regulatory Flexibility Analysis in section VIII of this notice includes more detail regarding impacts on small entities. There are also effects on consumers.

In general, most firms should be able to comply with the revised rule with modest cost effects on themselves or their customers, because complying closures are known to exist and to be available at low incremental costs. However, there are several categories of effects of the revised PPPA protocols, especially where firms undertake to develop new or modified packaging. These effects include: design and development of new or modified closures; testing to determine compliance with the CR protocol requirements and, if needed, the requirements of other agencies; testing to ensure product integrity or to meet other standards, such as strength or stability; testing for consumer acceptance, if desired; modification of packaging equipment to accommodate the new packaging; production costs; and other miscellaneous effects. Production costs, which would be ongoing, will not be significant. The remaining costs are one-time, up-front expenditures.

B. Economic Comments

Many commenters expressed concern that the revised regulations will result in increased costs in several areas. The response to specific comments is presented below.

Test costs. Some commenters claimed that the cost of testing will increase because of the requirement of informed consent for the child test and the increased numbers of seniors tested in the sequential senior test.

As was discussed previously, the CPSC is required to use informed consent in all human testing. However, data obtained from child tests conducted without informed consent will not be disregarded based on the lack of informed consent alone. Since there is no requirement for testing, it is the package or product manufacturer's decision to test either with or without informed consent.

With respect to the cost of sequential testing, the issue of increased costs is moot because, as discussed above, the Commission has decided not to adopt this approach.

Cost-benefit comments. Several commenters claimed that the Commission was required by the PPPA to assess the economic impact of the revisions and had not done so. One commenter argued that the statutory

[16] Drug and Pharmaceutical Packaging Materials, May 1991.

[17] Certain household products that meet the size exemption may require special packaging by the Environmental Protection Agency (EPA). EPA, Prevention, Pesticides and Toxic Substances [7506C], EPA–735–F–94–003, For Your Information.

[18] In the Initial Regulatory Flexibility Analysis, 1986 Bureau of Census closure shipment data for companies using Standard Industrial Classification (SIC) 3089 (Plastic Products, Not Elsewhere Classified were cited. The latest available shipment data appear in Bureau of Census, Closures for Containers, MQ34H(92)–5, Summary for 1991, issued July 1992, after which Census discontinued publishing the report due to withdrawal of trade association funding.

terms ''practicable,'' appropriate,'' and ''reasonable'' require the agency to justify the standards on cost-benefit grounds.

The terms ''practicable'' and ''appropriate'' are found in the findings that the Commission is required to make under section 3(a)(2) of the PPPA. 15 U.S.C. 1472(a)(2). Whatever these terms may mean in other contexts, they are specifically described in the legislative history of the PPPA:

> In order to find that special packaging is ''practicable'', the [Commission] must determine, for example, whether special packaging meeting the standard would be susceptible to modern mass-production and assembly-line techniques. Finally, in order to find that special packaging is ''appropriate for such substance'', the [Commission] must examine the substance under consideration and find that packaging complying with the standard is not detrimental to the integrity of the substance and does not interfere with its storage or use.

S. Rep. No. 91–845 at 10. Thus, these terms do not require cost-benefit findings.

Section 3(b) of the PPPA requires the Commission to consider the ''reasonableness'' of any PPPA standard it issues. However, the legislative history of the PPPA states, with respect to section 3(b), the Commission

> Is not required to make a formal finding regarding these issues. This paragraph is intended to prevent the [Commission] from ruling out available evidence on these issues and to insure consideration of that evidence.

S. Rep. No. 91–845 at 10 (emphasis added).

Thus, the Commission is not statutorily required to ''justify'' PPPA standards on cost-benefit grounds, as contended by this commenter. Nevertheless, the Commission is always concerned about the potential costs of its actions. The Commission seeks to fulfill its Congressionally-mandated mission in the most cost-effective manner. Accordingly, the Commission had its staff present the available information on costs and benefits for consideration. [236] That information, which is discussed in detail below, included the likely costs to industry to comply with an older-adult test protocol. Significantly, those costs are overwhelmingly one-time, up-front expenses.

By comparison, the $500 million annual societal costs of accidental childhood ingestions provide a tremendous potential for ongoing benefits from the rule. While the costs of the rule will largely be incurred before the rule's effective date, the substantial benefits of the rule will continue for the foreseeable future.

Moreover, the Commission has taken several actions to potentially reduce the cost of the final rule. These include using an adult panel of ages 50–70, instead of 60–75, and eliminating the sequential test which, in some cases, could require testing up to 400 adults.

Accordingly, the Commission concludes that the costs of the rule are justified in view of the benefits that it will achieve.

For additional discussion of the findings that the Commission is required to make in order to issue this rule, and of the other matters the Commission is required to consider but not make formal findings on, see section V of this notice.

Another commenter indicated that the Commission has not complied with Executive Order 12866, which requires that certain agencies provide the Office of Management and Budget with analyses of the costs and benefits of proposed significant regulatory actions and their alternatives.

Executive Order 12866 imposes a number of requirements on ''agencies,'' as that term is defined in the order. However, under the Order, the term ''agency'' generally does not include independent regulatory agencies, such as the Commission, as that term is defined in 44 U.S.C. 3502(10). Thus, except for preparing a Regulatory Plan and Regulatory Agenda (which the Commission does), the requirements of Executive Order 12866 do not apply to the Commission. Accordingly, the comments relating to the Commission's responsibilities under this Order are inapplicable.

V. Statutory Requirements for Issuing PPPA Standards

A. General

Section 3(a)(1) of the PPPA, 15 U.S.C. 1472(a)(1), authorizes the Commission to issue standards for the special packaging of any household substance if it finds that ''the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance.'' As noted previously, special packaging is packaging that is significantly difficult for children under 5 years of age to open and not difficult for normal adults to use properly. 15 U.S.C. 1471(4).

Section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), requires the Commission to find that the amended standard ''is technically feasible, practicable, and appropriate for [the substances to which it will apply].'' ''Technically feasible'' means that package designs that would meet the requirements of 16 C.F.R. 1700.15(b), and that would be suitable for use with the products subject to the rule, are or can be available. S. Rep. No. 91–845 at 10. A standard is ''practicable'' when special packaging for the products covered by the rule is adaptable to modern mass production and assembly line techniques. *Id.* A standard is ''appropriate'' where special packaging can be made available in forms that are not detrimental to the integrity of the substance and do not interfere with its storage or use. *Id.*

The Commission's staff developed data to support these statutory findings with respect to the 60–75 age group, rather than the participants of ages 50–70 in the panel specified in the final rule. However, these data also support the findings for the 50–70 age group, because packaging that achieves passing results with a 60–75 panel will also meet the 50–70 panel requirement.

Under section 3(b) of the PPPA, 15 U.S.C. 1472(b), the Commission, in issuing a PPPA standard, also is required to consider (a) the reasonableness of the standard, (b) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances, (c) the manufacturing practices of industries affected by the PPPA, and (d) the nature and use of the household substance. In issuing this rule, the Commission has considered these factors.

B. Availability to Children

As noted above, in order to issue a CRP standard, the Commission must find that ''the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance.'' 15 U.S.C. 1472(a)(1). The Commission previously made this finding for the substances listed in 16 C.F.R. 1700.14 when it required that they meet the standards and testing procedure currently specified in 16 C.F.R. 1700.15 and 1700.20. Insofar as those findings relate to the toxicity of the substances and to the general accessibility of the packages to children in the household, these findings are still applicable.

Even though these substances are now marketed in CRP, changes to the adult protocol are needed to adequately protect children from the serious personal injury or serious illness presented by these substances. As explained above, the noncomplying

provision of the PPPA, 15 U.S.C. 1473(a), specifically allows packagers to supply nonprescription regulated products in one size of conventional packaging. 16 C.F.R. 1700.5. In addition, 15 U.S.C. 1473(b) allows regulated prescription products to be provided in non-CRP when requested by the purchaser or directed by the prescriber. Many people exercise these options to obtain packaging that is not CR, and this exposes a significant number of young children to toxic products.

A 1989 CPSC study [112] analyzed a statistical sample of ingestions of medications by children under age 5 that were treated by hospital emergency rooms reporting to the National Electronic Injury Surveillance System (NEISS). This study showed that 44% of the prescription medicines in the study were not dispensed in a CR package. This study also showed that about 40% of the medications (prescription or nonprescription) in the study were not originally packaged in a CR container at the time of purchase and that about 17% of the medications were originally packaged in a CRP but were not in a secured (returned to the CR mode) CRP at the time of the ingestion. The 17% that were no longer in secured CRP consisted of (i) cases where the medication had been removed from the container before the ingestion (about 9%), (ii) cases where the medication was in a CR package but the top was left open (about 6%), and (iii) cases where the medication was in a container with a different top (about 2%).

Further, a 1986 study conducted by the CPSC in conjunction with the AAPCC demonstrated the occurrence of pediatric drug ingestions involving disabled CRP or non-CR packaging. [29] The study involved 9 poison control centers and about 2,000 pediatric drug ingestions. The study showed that, for all medicines in prescription containers other than a unit-dose package, 18% (n=234) had a cap that was loose or off prior to the ingestion. Of those cases involving toxic drugs, approximately (i) 6% involved a CRP with the closure left off or loose, (ii) 17% involved contents transferred from one container to another, and (iii) 18% involved a non-CR package. Thus, improper use of CRP apparently is involved in a substantial number of ingestions by children.

The available information also shows that much of this misuse is caused by regarding the CRP as too difficult to open. This was demonstrated by a 1980 CPSC report of the results of a telephone survey of about 3,000 consumers concerning how they used both drugs and chemical specialty items. [15] In that survey, the primary reason for improper use of CRP for about 42% of the persons who said they left the CR cap off was that it was too difficult to open or close. This was also the primary reason given by 43% of those who said they transferred contents from one container to another and by 59% of those who said they replaced the CR cap with a non-CR cap. These data demonstrate that a major reason why consumers use CR packaging improperly is that the CR packaging is too difficult to open or close.

The problem of operating CRP has a special impact on older consumers, who as a group have more difficulty opening these packages. A survey of 120 non-institutionalized older persons showed that 60% acknowledged having difficulty opening or closing CR medication containers. [9] Sixty-four percent of the women (average age, 70 years) and 36% of the men (average age, 67 years) admitted to having difficulty.

The difficulties experienced by older persons in using CRP, and the resultant tendency to avoid using such packaging, expose children to risk. Data acquired since the 18–45 age panel was selected have shown that there is substantial exposure of young children to adults older than age 60. In the 1989 CPSC NEISS study [112], 16% of the prescription medicines ingested belonged to a grandparent. The percentage of the prescription drugs ingested that belonged to persons age 60 or above was also 16%. These data demonstrate the importance of assuring that older adults can operate CRP by substituting a panel of older persons.

Commission tests [121] show that the inclusion of an older-adult test as part of the PPPA human performance test protocol also will improve the ability of all adults to use CRP. If CRP were easier to use, there would be less motivation to seek out non-CR packaging. Thus, fewer conventional packages would be available to young children who live with or are otherwise exposed to the purchasers. In addition, if complying packages were easier to open and resecure, the packages would more likely be properly resecured after use. Accordingly, substituting a panel of older adults will help protect children by increasing consumer willingness to use CRP and to keep the package properly resecured. This conclusion is supported by the available information.

The Commission has received at least 76 form letters stating that the sender has trouble with CRP, supporting the 60–75 age panel requirement, and pledging that the writer would use CRP if it were inexpensive and easy to use. [140] The Commission also is aware of one study showing that easy-to-use CRP would result in increased proper resecuring of caps. [21]

Previously-available packaging was considered to be difficult to open by 22 to 64% of people from ages 18 to 45, depending on package type. [27, 28] Among people 61 to 75 years old, 27 to 69% found the packages difficult to open. Recent test results with older adults with more senior-friendly packaging differ markedly from the tests cited above. These latter results showed 95 to 99% of the adults (ages 60 to 75) were able to use the reclosable packages tested, and 84 to 91% of the adults rated the packages as ''easy to use.'' [195] Similar results were obtained for non-reclosable packaging.

Thus, the data support the conclusions that a panel of older persons will make CRP easier for normal adults to use; that this will result in more persons buying CRP and using it properly, and that this will ultimately result in fewer accidental poisonings of young children.

For the above reasons, the Commission finds that the degree and nature of the hazard to children in the availability of the substances specified in 16 C.F.R. 1700.14, by reason of packaging that does not comply with the revised protocol, is such that issuance of the revised protocol is required to protect children from serious personal injury or serious illness from handling, using, or ingesting such substances.

C. Technical Feasibility

Introduction

As noted above, technically feasible means that packaging meeting the new standard can be produced. Based on testing done under Commission contract and other information in the record from industry sources, the Commission concludes that special packaging meeting the revised test protocols is technically feasible for all products now required to be in CRP that will be covered by the revised protocols.

The discussion below shows how the Commission reached this conclusion for various categories of packaging as established by ASTM. It is important to note, however, that manufacturers need not continue to use the same type of package that they have in the past. In some cases, it may be easier or less costly to switch to another type of package that is senior-friendly than to obtain or develop a senior-friendly package of the same type that was used previously.

Continuous-Threaded Packaging

Most of the regulated products use or can use this type of CRP. Commercially

available CR ASTM Type IA CT 28mm caps with liner and tamper resistant shrink neck band, on white round plastic 50-tablet bottles [195] were tested under a CPSC contract. This package requires a push down and turn force to open. The CRP has a SAUE of 0.953 (n=100) and a CR effectiveness (CRE) of 100% (n=50), and 90% of the senior adults indicated the package was easy to use. *Id*. The package manufacturer has supplied CPSC with older-adult protocol test data that show other sizes of this type of special packaging also meet the proposed SAUE and CRE requirements. [240]

In addition, a commercially available CR ASTM Type IB CT 35mm cap without liner on a 50-ounce plastic-handled bottle with two locking notches [195] was tested under CPSC contract. The package requires a squeeze and turn force to open. This CRP had a SAUE of 0.983 (n=100) and a CRE of 100% (n=100), and 84% of the senior adults indicated the package was easy to use. *Id*. CPSC has senior protocol test data from the manufacturer showing other sizes of this design CRP also meet the proposed SAUE and CR effectiveness requirements. [240]

For those products requiring metal containers and closures for product stability purposes, one manufacturer has an InterLok plastic over metal 1¼ inch standard alpha nozzle CR cap, requiring a tool to open, that is suitable for use with metal containers. [213] The manufacturer indicated the package likely complies with proposed SAUE and CRE requirements.

Lug-Type Packaging

This type of CRP is typically used for dispensing prescription drugs. A commercially available CR ASTM Type IIA lug, 13 dram, 35mm cap with insert liner on a round amber prescription polypropylene vial without product was tested by CPSC under contract. [160, 195] The package requires a push down and turn force to open. The package had a SAUE of 0.961 (n=100) and a CRE of 100% (n=100), and 89% of the senior adults indicated the package was easy to use. [195] The package manufacturer has supplied CPSC with older adult protocol test data that show other sizes of this type of special packaging would also meet the proposed SAUE and CRE requirements. [240]

The ASTM's Institute for Standards Research (''ISR'') conducted senior adult testing (n=1600) using four protocol testing firms. [211] The CRP tested was the same type from the same company as that tested by CPSC, but with a different production date. Test data from all four testing firms showed the CRP complying with the proposed SAUE requirements. Three of the four testing firms reported compliance with the proposed standards after testing the first set of 100 senior adults.

Snap-Type Packaging

This type of CRP is typically used for prescription drugs and over-the-counter (OTC) nonliquid products, *i.e.*, tablets, capsules, powders, etc. A commercially available CR ASTM Type IIIA snap 33 mm cap with liner and tamper resistant shrink neck band, and foil inner seal on a white round plastic bottle [9] was tested under CPSC contract. [160, 195] This package requires arrows to be lined up and an upward force applied to open. This CRP had a SAUE of 0.992 (n=100), a CRE of 97% (n=100), and 91% of the senior adults indicated the package was easy to use. [195] There is no reason to believe that other sizes of this design CRP cannot be made senior-friendly.

Pouches and Blister Packaging

The non-reclosable single-use CR pouch and blister packaging are used for a variety of products and can be used for most regulated products. Four commercially available packages containing product, two CR pouches and two CR blisters, were tested by CPSC under contract as received from the manufacturer. The packages tested are as follows:

A CR ASTM type IVA foil pouch with internal (hidden) tear notch opening was tested with 400 seniors and had a SAUE of 0.981 after the first 100 adults tested, and 80.5% of the senior adults indicated the package was easy to use. [194] This package design is presently used for many products.

The same type of foil pouch was also tested with instructions to use scissors to open. [194] In this case, it is classified as a CR ASTM type IVC foil pouch. The CR pouch, opened with a tool, had a SAUE of 1.000 after the first 100 adults tested, and 99% of participants indicated the package was easy to use. *Id*. Test results show that senior adults can successfully open CR pouches with a tool (scissors) and find it easy to do.

A CR ASTM type VIIID, semi-rigid blister with peel and push out opening, blister card ($3 \times 4 = 12$ blisters) was tested with 400 seniors and had a SAUE of 0.961 after the first 100 adults tested, and 81% of participants indicated the package was easy to use. [194] This package design is used for a number of products at this time.

The ASTM/ISR conducted senior adult testing (n=1600) on the same type of semi-rigid blister from the same manufacturer and containing the same product as the Commission had tested using four protocol testing firms. [211] Test data from all four testing firms showed the CRP complying with the proposed SAUE requirements. Three of the four testing firms reported compliance with proposed standards after the first test of 100 senior adults.

A CR ASTM type VIIIE, semi-rigid blister with internal tear notch and instructions to use scissors to open, blister card ($2 \times 3 = 6$ blisters) was tested with 400 seniors and had a SAUE of 0.942 after two sets of 100 adults were tested. [194] Eighty-four percent of the participants indicated the package was easy to use. *Id*. This design package is used for a number of products at this time that are regulated, *i.e.*, hazardous, at the one- or two-unit level. Test results show that senior adults can successfully open CR blisters with a tool (scissors) and find it easy to do.

Tests with commercially available products show there is senior-friendly CR pouch and blister packaging on the market. [194] Such packaging is, therefore, technically feasible. Some products using CR pouch and blister packaging presently include the option of using a tool (scissors) to open the package. Data show that the use of a tool (scissors) increases the number of seniors able to open the package and the ease with which they open the package. Id.

Aerosols and Pumps

Currently, a few PPPA-regulated substances, such as oven cleaners, use this type of packaging. Products that must be in aerosol form are not subject to the new senior-friendly requirements. They will be, however, subject to the revised child test requirements and will remain subject to the current adult-test requirements.

One CRP manufacturer has advertised its CR overcap—ASTM type VIID, a permanently attached hinged overcap that requires a tool (coin) to open—to be senior-friendly. [232, Ref. 15] This design can be used for aerosols and certain mechanical pump dispensers. Based upon past experience with such designs, the Commission believes that this overcap could be developed so it would be both child-resistant and senior-friendly. If a tool is required to open the package, it will likely comply with the CR effectiveness standards. With the leverage afforded when using a tool (e.g., a coin) and with the proper opening force a senior-friendly package can be accomplished.

Developing CR, SAUE packaging for the small capacity mechanical pump package may require more time than other package types. A CR overcap with

a tool-assisted opening feature can ensure child-resistance. However, making this cap senior-friendly is more difficult.

The Commission concludes that the available information support the finding that senior-friendly mechanical pump packaging is technically feasible.

D. Practicability

For ASTM types I, II, III, IV and VIII, (CT, lug, snap, pouch, blister, and mechanical dispensers) senior-friendly CRP are presently being used by some companies for regulated products. [232, 240] These companies use assembly line and mass production techniques in their manufacturing processes. This shows that it is practicable to package regulated products in special packaging. No major problems are anticipated in this change from the manufacturing standpoint.

Two CRP manufacturers state that ASTM types VII (hinged overcap) and IX (mechanical pump, with a CR overcap) senior-friendly special packaging can be made commercially available and are practicable. [232] This is supported by one manufacturer that supplies its CR overcap commercially. [232, Ref. 16] Modifications would need to be made to the assembly line to include the CR overcap feature, and production techniques may require modifications to obtain a satisfactory manufacturing process. This special package can be implemented into a product manufacturer's assembly line and production manufacturing process. Therefore, it is practicable to package products in aerosol and mechanical pump special packaging with overcaps.

Also, the Commission is aware of an aerosol design that can be actuated by an adult-sized finger but not by a child's. [216, 240 Ref. 12] Like the CR overcap design, this package can be used with assembly line and mass production techniques and is therefore practicable. For the reasons discussed above, however, products that must be packaged in aerosol form or in metal cans are not required to meet the senior-friendly requirements in the rule.

E. Appropriateness for the Substance

Some companies are presently using senior-friendly ASTM types I, II, III, IV and VIII special packaging for their products. Companies can use existing CRP designs and materials that have proven not to be detrimental to the integrity of the substance and have not interfered with its storage or use. The implementation of senior-friendly packaging should not affect shelf-life and integrity, because it is anticipated that the same packaging materials could be used in contact with the product. FDA or DOT approval may be required if a switch in packaging is required for a particular product. However, the record information supports the finding that senior-friendly CRP of ASTM types I, II, III, IV, and VIII are appropriate for the packaged substances.

Available information also supports the finding that senior-friendly CRP of ASTM types VII and IX is appropriate for the packaged substances. The CR overcap method of packaging has successfully been used. [232] The CR overcap concept does not affect the integrity of the substance or interfere with its storage or use, because the CR overcap is separate from the product container. Product shelf-life and integrity would not be expected to change, as it is anticipated that the same packaging materials could be used in contact with the product.

F. Conclusion

The Commission concludes that the revised protocols will ensure that special packaging will be significantly difficult for children under age 5 to open or obtain a toxic or harmful amount of the contents within a reasonable time and will not be difficult for normal adults to use properly. The Commission also finds that for the products covered by the revised rule, special packaging is technically feasible, practicable, and appropriate for the substances.

VI. Effective Date

Section 8 of the PPPA, 15 U.S.C. 1471n, requires that the effective date of a special packaging standard ''shall not be sooner than one hundred and eighty days or later than one year from the date such regulation is final, unless the [Commission], for good cause found, determines that an earlier effective date is in the public interest and publishes in the **Federal Register** [the] reason for such finding, in which case such earlier date shall apply.'' As explained below, the Commission is establishing different effective dates for some of the amendments being issued.

With regard to the revised requirements for the senior-adult test panel, senior-adult test times, and standardized senior-adult instructions, there are regulated PPPA products on the market with ASTM type IA, IB, IIA, IIIA, IVA, IVC, VIIID, and VIIIE CRP that comply with the SAUE requirements. This is demonstrated by CPSC and ASTM/ISR senior-adult protocol test results.

Most PPPA-regulated substances could be packaged in senior-friendly CRP in 1 year. [232, 240] Additional time may be required for others. To serve the market, over 3 billion senior-friendly CRP need to be manufactured per year. The CRP design modifications, mold changes, protocol testing, and, in some cases, FDA stability or DOT performance testing all require time to complete before commercial production of senior-friendly CRP can begin. Companies that currently make senior-friendly CRP do not presently have the production capacity to meet the entire demand.

Two CR overcap manufacturers have indicated that, with adequate time, they can make suitable ASTM type VII and IX senior-friendly CR overcaps. [232, Refs. 15 and 16] This type of CR feature can be used with packaging using mechanical pumps. Additional time may be required for the two CR overcap manufacturing companies to redesign for new sizes, obtain molds, protocol test, and start commercial production. More than 1 year may be needed to ensure adequate supplies of new senior-friendly and CR packaging.

Therefore, the Commission is allowing the maximum time permitted by statute, 1 year, as the effective date for the senior-adult test panel, senior-adult test times, senior-adult standardized instructions, and limitations on sites and testers for the younger-adult test. The Commission is also granting an 18-month blanket exemption from compliance after the effective date in order to ease the burden on industry. In addition, the Commission is implementing a procedure whereby companies unable to comply within that time, despite their good-faith efforts to do so, may apply for temporary enforcement stays. These temporary enforcement stays are described in section III(I) of this notice, concerning the Commission's response to comments on the effective date.

The child-test amendments concerning sequential testing, three age groups, standardized instructions, and the limitations on sites and testers are not expected to change the results of these tests. However, to allow time for companies to complete ongoing studies and plan future studies, these amendments will become effective January 24, 1996.

The amendments to publish the suggested guidelines for an appropriate resecuring test will become effective August 21, 1995. The Commission finds that this effective date is in the public interest because the guidelines provide additional options for achieving reliable test results, yet, since they are not mandatory, do not impose new obligations on companies. Therefore,

there is no reason why these guidelines should not become effective as quickly as possible.

VII. Environmental Protection Agency

The Environmental Protection Agency (''EPA'') enforces the Federal Insecticide, Fungicide and Rodenticide Act (''FIFRA''), as amended (7 U.S.C. 136–136y). Under that Act, EPA has the authority to protect people and the environment from the adverse effects of pesticides by ensuring that pesticide products are applied, stored, and disposed of in a manner consistent with the product registration.

The Administrator of EPA is authorized to establish standards with respect to the package, container, or wrapper in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by FIFRA. FIFRA specifies that the standards established by EPA must be consistent with those established under the authority of the PPPA. Thus, packages that comply with the PPPA regulations would also comply with the standards established by EPA for products regulated under FIFRA. However, EPA would retain the authority to exempt products, either completely or under stated conditions, from the requirement that products regulated under FIFRA have CRP.

Since the Commission is amending its regulations under the PPPA, EPA can be expected to make any necessary amendments to its regulations for packaging so that EPA's regulations will be consistent with those established by the Commission. However, the Commission is not in a position to fully assess how the changes may affect all the products subject to regulation by EPA under FIFRA. For example, some of the containers subject to FIFRA are much larger, and have much larger and more massive closures, than do the household products regulated by CPSC under the PPPA. Such products, that comply with the present PPPA requirements, may not be able to comply with the senior-adult test panel or reduced testing times being proposed for products subject to the PPPA. However, if necessary, EPA has the option of allowing certain containers to comply with a standard incorporating a 5-minute test of the 18–45 age group.

VIII. Regulatory Flexibility Analysis [236]

A. General

The Regulatory Flexibility Act (Pub. L. No. 96–345) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the rule on small businesses and other small entities, when a notice of proposed rulemaking is published in the **Federal Register**. In its proposal to revise the protocol for testing CRP under the PPPA, the Commission made an initial determination that the effect of the revisions depended upon the amount of package testing needed and the potential cost of research and development and equipment modification, if necessary, to enable closures/packages to meet the revised test protocol. The potential cost of meeting marketing requirements of other government agencies was also unknown.

CPSC received comments on the proposal that provided information on anticipated impacts on companies. Some comments were specific to an individual company; some comments were more generalized and came from trade associations representing small and large businesses. The types of businesses impacted by the proposed revisions include: closure/package manufacturers; household product manufacturers/packagers, pharmaceutical packagers, and pharmacies.

Estimates of the number of businesses in the various market segments are based on data from government sources, trade associations, and trade publications. These sources did not provide specific information on the size of the firms. Small entities that are unaffiliated with trade organizations and that did not comment on the proposal are included in the estimates only to the extent that they reported (anonymously) to government sources.

B. Closure Manufacturers

The Bureau of the Census reported 1991 CR shipment data from 40 or fewer manufacturers (none by name). However, CPSC staff identified about 70 manufacturers of CR closures, many of which were likely included in the Census data. According to industry spokespersons, the CR closure segment of the market is highly concentrated, with the 4 largest manufacturers of plastic closures accounting for an estimated 80% of the CR closure market. [236] Few, if any, of the more than 60 other manufacturers (an unknown number of which may be small) produce CRP as a primary product line, since the CR market is itself only a small fraction of the closure market.

At a minimum, closure manufacturers will incur the costs of testing existing packages for SAUE. Failing packaging cannot be filled after the expiration of the 18-month exemption from compliance (unless an additional temporary stay of enforcement is granted), but such packaging may be modified or redesigned if economically feasible. The costs of changes are expected to fall on the customer and, in most cases, to pass through to the consumer. It is unlikely that a substantial number of small firms will experience severe or permanent adverse impacts as a consequence of the final rule.

CPSC received only one comment from a self-identified small business that expected ''onerous and undue hardship.'' CR closures account for 20% of this company's business. One aspect of the burden concerns timing, which the Commission has addressed by granting an 18-month exemption from compliance after the effective date. In addition, the company can apply for an additional temporary stay of enforcement if good-faith efforts do not enable compliance by the expiration of the 18-month exemption.

C. Household Product Manufacturers and Packagers

Two trade associations, representing over 900 firms, commented on the proposal. One association said about 65% of its members (almost 300) were small businesses; the other association (representing about 500 members) did not respond to a staff request for this information. Comments from the associations and from several large household product manufacturers centered around the cost of testing, the availability of packaging, and the timing of the implementation of the rule. CPSC did not receive comments from individual self-identified small household product manufacturers or packagers. The manufacturers and packagers of household products that must be packaged in metal containers or aerosol form will benefit from the Commission's decision not to include these products within the scope of the products subject to the senior-friendly requirements of the revised rule.

Small household product manufacturers will incur the costs of testing proprietary packages, if they use such packaging. Economic considerations will guide decisions by small companies on whether to pursue SAUE package development (if proprietary packages fail the revised

protocol), to use standard (supplier stocked, on-the-shelf) SAUE packaging, or to reformulate or withdraw a product. Some SAUE packaging is available now; other SAUE package types, including those for products having formulations that impose unusual requirements on packaging, are expected to become available. Changes in packaging may require associated equipment purchases or modifications. Costs of testing some products to meet the requirements of government agencies other than CPSC may be required if packaging is changed. Incremental costs associated with new SAUE packaging should not add materially to the costs of a product and are expected to be passed on to the consumer.

CPSC does not anticipate that any substantial number of small businesses will be significantly affected, however, because of the current and expected future availability of SAUE packaging for all types of product formulations. If necessary, companies can apply for a temporary stay of enforcement to comply with the rule.

D. Pharmaceutical Packagers

There are an estimated 1,200 pharmaceutical packagers, according to an FDA spokesperson, an unknown number of which are small. [236] Also unknown is the number of small firms that provide consumer-ready pharmaceuticals; some firms provide products only in bulk packages. The Commission expects that many of the small firms can use standard SAUE packaging. However, firms that use reclosable packaging may have to find new suppliers, and may also have to pay more for SAUE packaging. Films, foils, and other materials used for SAUE non-reclosable packaging also may cost more than the materials used for existing CRP. No comments were received from any small company regarding the possible need for stability testing to meet FDA requirements. Incremental costs for new packaging are expected to be modest and most likely will be passed on to users. CPSC does not anticipate that a significant number of packagers will be severely or permanently affected.

E. Pharmacies

There are over 40,000 independent pharmacies, according to a representative of the National Association of Retail Druggists, most of which are small businesses. [236] (There are an additional 25,000 chain pharmacies, including those associated with drug and food stores and mass merchandisers. *Id.*) Retail establishments may have to find new suppliers if old suppliers abandon the market or do not offer acceptable sizes of containers. Pharmacies may also have to pay more for SAUE packaging than for existing CRP. Pharmacy staff probably will spend additional time instructing customers in the use of new packaging. Modest incremental costs for SAUE packaging and for staff time are likely to be passed on to the consumer, and there should not be a big impact on most pharmacies.

F. Conclusion

The Commission concludes that the action to revise the testing protocol for special packaging under the PPPA will not have a significant adverse impact on a substantial number of small businesses.

IX. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the revisions to the PPPA protocols.

The Commission assessed the possible environmental effects of rulemaking associated with the revisions to the protocol for testing CRP under the PPPA and presented its findings in a paper dated April 2, 1990. [123, Tab D] Reassessment of the possible environmental effects confirms the original determination that the rule will have no significant effects on the environment. [236] The revisions to the rule involve a test method and establish new test standards. They will not change the number of CRP in use. Since the rule will not become effective until 1 year after its publication and there will be a subsequent 18-month blanket exemption from compliance, there is time to use up existing inventories of unfilled non-SAUE packaging. Additionally, SAUE packaging is made of basically the same materials and in basically the same way as older styles of CRP. Much of the existing equipment involved in the production and filling of non-SAUE packaging can be modified to produce SAUE packaging, rather than replaced.

EFFECTIVE DATES: Revised §§ 1700.15(b)(2), 1700.20(a)(3), and 1700.20(a)(4) are effective July 22, 1996. Until then, current §§ 1700.15(b)(2), 1700.20(a)(4), and 1700.20(a)(5) remain in effect.

Revised §§ 1700.20(a) (1) and (2) are effective January 24, 1996. Until then, current §§ 1700.20(a)(1)–(3) remain in effect.

New § 1700.20(d) is effective August 21, 1995.

For mandatory provisions, the effective dates specified above apply to all products subject to the respective sections that are packaged on or after the effective date.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

V. Conclusion

For the reasons given above, the Commission amends 16 CFR 1700.20 as follows:

PART 1700—[AMENDED]

1. The authority citation for Part 1700 is revised to read as follows:

Authority: 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

2. Section 1700.15(b)(2) is revised to read as follows:

§ 1700.15 Poison prevention packaging standards.

* * * * *

(b) * * *

(2) Ease of adult opening. (i) Senior-adult test. Except for products specified in paragraph (b)(2)(ii) of this section, special packaging shall have a senior adult use effectiveness (SAUE) of not less than 90% for the senior-adult panel test of § 1700.20(a)(3).

(ii) *Younger-adult test.* (A) When applicable. Products that must be in aerosol form and products that require metal containers, under the criteria specified below, shall have an effectiveness of not less than 90% for the younger-adult test of § 1700.20(a)(4). The senior-adult panel test of § 1700.20(a)(3) does not apply to these products. For the purposes of this paragraph, metal containers are those that have both a metal package and a recloseable metal closure, and aerosol products are self-contained pressurized products.

(B) Determination of need for metal or aerosol container.

(*1*) *Criteria.* A product will be deemed to require metal containers or aerosol form only if:

(*i*) No other packaging type would comply with other state or Federal regulations,

(*ii*) No other packaging can reasonably be used for the product's intended application,

(*iii*) No other packaging or closure material would be compatible with the substance,

(*iv*) No other suitable packaging type would provide adequate shelf-life for the product's intended use, or

(*v*) Any other reason clearly demonstrates that such packaging is required.

(*2*) *Presumption.* In the absence of convincing evidence to the contrary, a product shall be presumed not to require a metal container if the product, or another product of identical composition, has previously been marketed in packaging using either a nonmetal package or a nonmetal closure.

(*3*) *Justification.* A manufacturer or packager of a product that is in a metal container or aerosol form that the manufacturer or packager contends is not required to comply with the SAUE requirements of § 1700.20(a)(3) shall provide, if requested by the Commission's staff, a written explanation of why the product must have a metal container or be an aerosol. Manufacturers and packagers who wish to do so voluntarily may submit to the Commission's Office of Compliance a rationale for why their product must be in metal containers or be an aerosol. In such cases, the staff will reply to the manufacturer or packager, if requested, stating the staff's views on the adequacy of the rationale.

3. Section 1700.20(a) is revised to read as follows:

§ 1700.20 Testing procedure for special packaging.

(a) *Test protocols.* (1) *General requirements.*

(i) *Requirements for packaging.* As specified in § 1700.15(b), special packaging is required to meet the child test requirements and the applicable adult test requirements of this § 1700.20.

(ii) *Condition of packages to be tested.* (A) Tamper-resistant feature. Any tamper-resistant feature of the package to be tested shall be removed prior to testing unless it is part of the package's child-resistant design. Where a package is supplied to the consumer in an outer package that is not part of the package's child-resistant design, one of the following situations applies:

(*1*) In the child test, the package is removed from the outer package, and the outer package is not given to the child.

(*2*) In both the adult tests, if the outer package bears instructions for how to open or properly resecure the package, the package shall be given to the test subject in the outer package. The time required to remove the package from the outer package is not counted in the times allowed for attempting to open and, if appropriate, reclose the package.

(*3*) In both the adult tests, if the outer package does not bear any instructions relevant to the test, the package will be removed from the outer package, and the outer package will not be given to the test subject.

(B) *Reclosable packages—adult tests.* In both the adult tests, reclosable packages, if assembled by the testing agency, shall be properly secured at least 72 hours prior to beginning the test to allow the materials (e.g., the closure liner) to ''take a set.'' If assembled by the testing agency, torque-dependent closures shall be secured at the same on-torque as applied on the packaging line. Application torques must be recorded in the test report. All packages shall be handled so that no damage or jarring will occur during storage or transportation. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

(2) *Child test.* (i) *Test subjects.* (A) *Selection criteria.* Use from 1 to 4 groups of 50 children, as required under the sequential testing criteria in Table 1. No more than 20% of the children in each group shall be tested at or obtained from any given site. Each group of children shall be randomly selected as to age, subject to the limitations set forth below. Thirty percent of the children in each group shall be of age 42–44 months, 40% of the children in each group shall be of age 45–48 months, and 30% of the children in each group shall be of age 49–51 months. The children's ages in months shall be calculated as follows:

(*1*) Arrange the birth date and test date by the numerical designations for month, day, and year (e.g., test date: 8/3/1990; birth date: 6/23/1986).

(*2*) Subtract the month, day, and year numbers for the birth date from the respective numbers for the test date. This may result in negative numbers for the months or days. (e.g.,

$$\begin{array}{r} 8 \;/\; 03 \;/\; 1990 \\ -6 \;/\; 23 \;/\; 1986 \\ \hline 2 \quad -20 \quad\quad 4 \end{array}$$

(*3*) Multiply the difference in years by 12 to obtain the number of months in the difference in years, and add this value to the number of months that was obtained when the birth date was subtracted from the test date (i.e., 4×12= 48; 48+2= 50). This figure either will remain the same or be adjusted up or down by 1 month, depending on the number of days obtained in the subtraction of the birth date from the test date.

(*4*) If the number of days obtained by subtracting the days in the birth date from the days in the test date is +16 or more, 1 month is added to the number of months obtained above. If the number of days is −16 or less, subtract 1 month. If the number of days is between −15 and +15 inclusive, no change is made in the number of months. Thus, for the example given above, the number of days is −20, and the number of months is therefore 50−1=49 months.

(B) *Gender distribution.* The difference between the number of boys and the number of girls in each age range shall not exceed 10% of the number of children in that range. The children selected should have no obvious or overt physical or mental handicap. A parent or guardian of each child shall read and sign a consent form prior to the child's participation. (The Commission staff will not disregard the results of tests performed by other parties simply because informed consent for children is not obtained.)

(ii) *Test failures.* A test failure shall be any child who opens the special packaging or gains access to its contents. In the case of unit packaging, however, a test failure shall be any child who opens or gains access to the number of individual units which constitute the amount that may produce serious personal injury or serious illness, or a child who opens or gains access to more than 8 individual units, whichever number is lower, during the full 10 minutes of testing. The number of units that a child opens or gains access to is interpreted as the individual units from which the product has been or can be removed in whole or in part. The determination of the amount of a substance that may produce serious personal injury or serious illness shall be based on a 25-pound (11.4 kg) child. Manufacturers or packagers intending to use unit packaging for a substance requiring special packaging are requested to submit such toxicological data to the Commission's Office of Compliance.

(iii) *Sequential test.* The sequential test is initially conducted using 50 children, and, depending on the results, the criteria in Table 1 determine whether the package is either child-resistant or not child-resistant or whether further testing is required. Further testing is required if the results are inconclusive and involves the use of one or more additional groups of 50 children each, up to a maximum of 200 children. No individual shall administer the test to more than 30% of the children tested in each group. Table 1 gives the acceptance (pass), continue testing, and rejection (fail) criteria to be

used for the first 5 minutes and the full 10 minutes of the children's test. If the test continues past the initial 50-child panel, the package openings shown in Table 1 are cumulative.

TABLE 1—NUMBER OF OPENINGS: ACCEPTANCE (PASS), CONTINUE TESTING, AND REJECTION (FAIL) CRITERIA FOR THE FIRST 5 MINUTES AND THE FULL 10 MINUTES OF THE CHILDREN'S PROTOCOL TEST

Test panel	Cumulative number of children	Package openings					
		First 5 minutes			Full 10 minutes		
		Pass	Continue	Fail	Pass	Continue	Fail
1	50	0–3	4–10	11+	0–5	6–14	15+
2	100	4–10	11–18	19+	6–15	16–24	25+
3	150	11–18	19–25	26+	16–25	26–34	35+
4	200	19–30	.....	31+	26–40	.....	41+

(iv) *Test procedures.* The children shall be divided into groups of two. The testing shall be done in a location that is familiar to the children, for example, their customary nursery school or regular kindergarten. No child shall test more than two special packages. When more than one special package is being tested, each package shall be of a different ASTM type and they shall be presented to the paired children in random order. This order shall be recorded. The children shall be tested by the procedure incorporated in the following test instructions:

Standardized Child Test Instructions

1. Reclosable packages, if assembled by the testing agency, shall be properly secured at least 72 hours prior to the opening described in instruction number 3 to allow the materials (e.g., the closure liner) to ''take a set.'' Application torques must be recorded in the test report.

2. All packages shall be handled so that no damage or jarring will occur during storage or transportation. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

3. Reclosable packages shall be opened and properly resecured one time (or more if appropriate), by the testing agency or other adult prior to testing. The opening and resecuring shall not be done in the presence of the children. (In the adult-resecuring test, the tester must not open and resecure the package prior to the test.) If multiple openings/resecurings are to be used, each of four (4) testers shall open and properly resecure one fourth of the packages once and then shall open and properly resecure each package a second, third, fourth, through tenth (or other specified number) time, in the same sequence as the first opening and resecuring. The packages shall not be opened and resecured again prior to testing. The name of each tester and the package numbers that he/she opens and resecures shall be recorded and reported. It is not necessary for the testers to protocol test the packages that they opened and resecured.

4. The children shall have no overt physical or mental handicaps. No child with a permanent or temporary illness, injury, or handicap that would interfere with his/her effective participation shall be included in the test.

5. The testing shall take place in a well-lighted location that is familiar to the children and that is isolated from all distractions.

6. The tester, or another adult, shall escort a pair of children to the test area. The tester shall seat the two children so that there is no visual barrier between the children and the tester.

7. The tester shall talk to the children to make them feel at ease.

8. The children shall not be given the impression that they are in a race or contest. They are not to be told that the test is a game or that it is fun. They are not to be offered a reward.

9. The tester shall record all data prior to, or after, the test so that full attention can be on the children during the test period.

10. The tester shall use a stopwatch(s) or other timing devices to time the number of seconds it takes the child to open the package and to time the 5-minute test periods.

11. To begin the test, the tester shall hand the children identical packages and say, ''PLEASE TRY TO OPEN THIS FOR ME.''

12. If a child refuses to participate after the test has started, the tester shall reassure the child and gently encourage the child to try. If the child continues to refuse, the tester shall ask the child to hold the package in his/her lap until the other child is finished. This pair of children shall not be eliminated from the results unless the refusing child disrupts the participation of the other child.

13. Each child shall be given up to 5 minutes to open his/her package. The tester shall watch the children at all times during the test. The tester shall minimize conversation with the children as long as they continue to attempt to open their packages. The tester shall not discourage the children verbally or with facial expressions. If a child gets frustrated or bored and stops trying to open his/her package, the tester shall reassure the child and gently encourage the child to keep trying (e.g., ''please try to open the package'').

14. The children shall be allowed freedom of movement to work on their packages as long as the tester can watch both children (e.g., they can stand up, get down on the floor, or bang or pry the package).

15. If a child is endangering himself or others at any time, the test shall be stopped and the pair of children eliminated from the final results.

16. The children shall be allowed to talk to each other about opening the packages and shall be allowed to watch each other try to open the packages.

17. A child shall not be allowed to try to open the other child's package.

18. If a child opens his/her package, the tester shall say, ''THANK YOU,'' take the package from the child and put it out of the child's reach. The child shall not be asked to open the package a second time.

19. At the end of the 5-minute period, the tester shall demonstrate how to open the package if either child has not opened his or her package. A separate ''demo'' package shall be used for the demonstration.

20. Prior to beginning the demonstration, the tester shall ask the children to set their packages aside. The children shall not be allowed to continue to try to open their packages during the demonstration period.

21. The tester shall say, ''WATCH ME OPEN MY PACKAGE.''

22. Once the tester gets the children's full attention, the tester shall hold the demo package approximately two feet from the children and open the package at a normal speed as if the tester were going to use the contents. There shall be no exaggerated opening movements.

23. The tester shall not discuss or describe how to open the package.

24. To begin the second 5-minute period, the tester shall say, ''NOW YOU TRY TO OPEN YOUR PACKAGES.''

25. If one or both children have not used their teeth to try to open their packages during the first 5 minutes, the tester shall say immediately before beginning the second 5-minute period, ''YOU CAN USE YOUR TEETH IF YOU WANT TO.'' This is the only statement that the tester shall make about using teeth.

26. The test shall continue for an additional 5 minutes or until both children have opened their packages, whichever comes first.

27. At the end of the test period, the tester shall say, ''THANK YOU FOR HELPING.'' If children were told that they could use their teeth, the tester shall say, ''I KNOW I TOLD YOU THAT YOU COULD USE YOUR TEETH TODAY, BUT YOU SHOULD NOT PUT

THINGS LIKE THIS IN YOUR MOUTH AGAIN'' In addition, the tester shall say, ''NEVER OPEN PACKAGES LIKE THIS WHEN YOU ARE BY YOURSELF. THIS KIND OF PACKAGE MIGHT HAVE SOMETHING IN IT THAT WOULD MAKE YOU SICK.''

28. The children shall be escorted back to their classroom or other supervised area by the tester or another adult.

29. If the children are to participate in a second test, the tester shall have them stand up and stretch for a short time before beginning the second test. The tester shall take care that the children do not disrupt other tests in progress.

(3) *Senior-adult panel.* (i) *Test subjects.* Use a group of 100 senior adults. Not more than 24% of the senior adults tested shall be obtained from or tested at any one site. Each group of senior adults shall be randomly selected as to age, subject to the limitations set forth below. Twenty-five percent of the participants shall be 50–54 years of age, 25% of participants shall be 55–59 years of age, and 50% of the participants shall be 60–70 years old. Seventy percent of the participants of ages 50–59 and ages 60–70 shall be female (17 or 18 females shall be apportioned to the 50–54 year age group). No individual tester shall administer the test to more than 35% of the senior adults tested. The adults selected should have no obvious or overt physical or mental disability.

(ii) *Screening procedures.* Participants who are unable to open the packaging being tested in the first 5-minute time period, are given a screening test. The screening tests for this purpose shall use two packages with conventional (not child-resistant (CR) or ''special'') closures. One closure shall be a plastic snap closure and the other a CT plastic closure. Each closure shall have a diameter of 28 mm ± 18%, and the CT closures shall have been resecured 72 hours before testing at 10 inch-pounds of torque. The containers for both the snap- and CT-type closures shall be round plastic containers, in sizes of 2 ounce ± ½ ounce for the CT-type closure and 8 drams ± 4 drams for the snap-type closure. Persons who cannot open and close both of the screening packages in 1-minute screening tests shall not be counted as participants in the senior-adult panel.

(iii) *SAUE.* The senior adult use effectiveness (SAUE) is the percentage of adults who both opened the package in the first (5-minute) test period and opened and (if appropriate) properly resecured the package in the 1-minute test period.

(iv) *Test procedures.* The senior adults shall be tested individually, rather than in groups of two or more. The senior adults shall receive only such printed instructions on how to open and properly secure the special packaging as will appear on or accompany the package as it is delivered to the consumer. The senior-adult panel is tested according to the procedure incorporated in the following senior-adult panel test instructions:

Test Instructions for Senior Test

The following test instructions are used for all senior tests. If non-reclosable packages are being tested, the commands to close the package are eliminated.

1. No adult with a permanent or temporary illness, injury, or disability that would interfere with his/her effective participation shall be included in the test.

2. Each adult shall read and sign a consent form prior to participating. Any appropriate language from the consent form may be used to recruit potential participants. The form shall include the basic elements of informed consent as defined in 16 CFR 1028.116. Examples of the forms used by the Commission staff for testing are shown at § 1700.20(d). Before beginning the test, the tester shall say, ''PLEASE READ AND SIGN THIS CONSENT FORM.'' If an adult cannot read the consent form for any reason (forgot glasses, illiterate, etc.), he/she shall not participate in the test.

3. Each adult shall participate individually and not in the presence of other participants or onlookers.

4. The tests shall be conducted in well-lighted and distraction-free areas.

5. Records shall be filled in before or after the test, so that the tester's full attention is on the participant during the test period. Recording the test times to open and resecure the package are the only exceptions.

6. To begin the first 5-minute test period, the tester says, ''I AM GOING TO ASK YOU TO OPEN AND PROPERLY CLOSE THESE TWO IDENTICAL PACKAGES ACCORDING TO THE INSTRUCTIONS FOUND ON THE CAP.'' (Specify other instruction locations if appropriate.)

7. The first package is handed to the participant by the tester, who says, ''PLEASE OPEN THIS PACKAGE ACCORDING TO THE INSTRUCTIONS ON THE CAP.'' (Specify other instruction locations if appropriate.) If the package contains product, the tester shall say, ''PLEASE EMPTY THE (PILLS, TABLETS, CONTENTS, etc.) INTO THIS CONTAINER.'' After the participant opens the package, the tester says, ''PLEASE CLOSE THE PACKAGE PROPERLY, ACCORDING TO THE INSTRUCTIONS ON THE CAP.'' (Specify other instruction locations if appropriate)

8. Participants are allowed up to 5 minutes to read the instructions and open and close the package. The tester uses a stopwatch(s) or other timing device to time the opening and resecuring times. The elapsed times in seconds to open the package and to close the package are recorded on the data sheet as two separate times.

9. After 5 minutes, or when the participant has opened and closed the package, whichever comes first, the tester shall take all test materials from the participant. The participant may remove and replace the closure more than once if the participant initiates these actions. If the participant does not open the package and stops trying to open it before the end of the 5-minute period, the tester shall say, ''ARE YOU FINISHED WITH THAT PACKAGE, OR WOULD YOU LIKE TO TRY AGAIN?'' If the participant indicates that he/she is finished or cannot open the package and does not wish to continue trying, skip to Instruction 13.

10. To begin the second test period, the tester shall give the participant another, but identical, package and say, ''THIS IS AN IDENTICAL PACKAGE. PLEASE OPEN IT ACCORDING TO THE INSTRUCTIONS ON THE CAP.'' (Specify other instruction locations if appropriate.) If the package contains product, the tester shall say, ''PLEASE EMPTY THE (PILLS, TABLETS, CONTENTS, etc.) INTO THIS CONTAINER.'' After the participant opens the package, the tester says, ''PLEASE CLOSE THE PACKAGE PROPERLY, ACCORDING TO THE INSTRUCTIONS ON THE CAP.'' (Specify other instruction locations if appropriate.)

11. The participants are allowed up to 1 minute (60 full seconds) to open and close the package. The elapsed times in seconds to open and to close the package are recorded on the data sheet as two separate times. The time that elapses between the opening of the package and the end of the instruction to close the package is not counted as part of the 1-minute test time.

12. After the 1-minute test, or when the participant has opened and finished closing the package, whichever comes first, the tester shall take all the test materials from the participant. The participant shall not be allowed to handle the package again. If the participant does not open the package and stops trying to open it before the end of the 1-minute period, the tester shall say, ''ARE YOU FINISHED WITH THAT PACKAGE, OR WOULD YOU LIKE TO TRY AGAIN?'' If the participant indicates that he/she is finished or cannot open the package and does not wish to continue trying, this shall be counted as a failure of the 1-minute test.

13. Participants who do not open the package in the first 5-minute test period are asked to open and close two non-child-resistant screening packages. The participants are given a 1-minute test period for each package. The tester shall give the participant a package and say, ''PLEASE OPEN AND PROPERLY CLOSE THIS PACKAGE.'' The tester records the time for opening and closing, or 61 seconds, whichever is less, on the data sheet. The tester then gives the participant the second package and says, ''PLEASE OPEN AND PROPERLY CLOSE THIS PACKAGE.'' The time to open and resecure, or 61 seconds, whichever is less, shall be recorded on the data sheet.

14. Participants who cannot open and resecure both of the non-child-resistant screening packages are not counted as part of the 100-seniors panel. Additional participants are selected and tested.

15. No adult may participate in more than two tests per sitting. If a person participates in two tests, the packages tested shall not be the same ASTM type of package.

16. If more adults in a sex or age group are tested than are necessary to determine SAUE, the last person(s) tested shall be eliminated from that group.

(4) *Younger-adult panel.* (i) One hundred adults, age 18 to 45 inclusive, with no overt physical or mental handicaps, and 70% of whom are female, shall comprise the test panel for younger adults. Not more than 35% of adults shall be obtained or tested at any one site. No individual tester shall administer the test to more than 35% of the adults tested. The adults shall be tested individually, rather than in groups of two or more. The adults shall receive only such printed instructions on how to open and properly resecure the special packaging as will appear on the package as it is delivered to the consumer. Five minutes shall be allowed to complete the opening and, if appropriate, the resecuring process.

(ii) Records shall be kept of the number of adults unable to open and of the number of the other adults tested who fail to properly resecure the special packaging. The number of adults who successfully open the special packaging and then properly resecure the special packaging (if resecuring is appropriate) is the percent of adult-use effectiveness of the special packaging. In the case of unit packaging, the percent of adult-use effectiveness shall be the number of adults who successfully open a single (unit) package.

4. Add a new § 1700.20(d), reading as follows.

§ 1700.20 Testing procedure for special packaging.

* * * * *

(d) Recommendations. The following instructions and procedures, while not required, are used by the Commission's staff and are recommended for use where appropriate.

(1) *Report format for child test.*

A. Identification

1. Close-up color photographs(s) clearly identifying the package and showing the opening instructions on the closure.
2. Product name and the number of tablets or capsules in the package.
3. Product manufacturer.
4. Closure model (trade name—e.g., ''KLIK & SNAP'').
5. Closure size (e.g., 28 mm).
6. Closure manufacturer.
7. Closure material and color(s) (e.g., white polypropylene).
8. Closure liner material.
9. TAC seal material.
10. Opening instructions (quote exactly, e.g., ''WHILE PUSHING, DOWN, TURN RIGHT''). Commas are used to separate words that are on different lines.
11. Symbols, numbers, and letters found inside the closure.
12. Package model.
13. Package material and color.
14. Net contents.
15. Symbols, numbers, and letters on the bottom of the package.
16. Other product identification, e.g., EPA Registration Number.

B. Procedures

1. Describe all procedures for preparing the test packages.
2. Describe the testing procedures.
3. Describe all instructions given to the children.
4. Define an individual package failure.

C. Results

1. Openings in each 5-minute period and total openings for males and for females in each age group.
2. Opening methods (e.g., normal opening, teeth, etc.).
3. Mean opening times and standard deviation for each 5-minute test period.
4. The percentage of packages tested at each site as a percentage of total packages.
5. The percentage of packages tested by each tester as a percentage of total packages.
6. Child-resistant effectiveness for the first 5-minute period and for the total test period.

(2) *Standardized adult-resecuring test instructions.* CPSC will use the adult-resecuring test where an objective determination (e.g., visual or mechanical) that a package is properly resecured cannot be made. The adult-resecuring test is performed as follows:

Adult-Resecuring Procedure

1. After the adult participant in either the senior-adult test of 16 CFR 1700.20(a)(3) or the younger-adult test of 16 CFR 1700.20(a)(4) has resecured the package, or at the end of the test period (whichever comes first), the tester shall take the package and place it out of reach. The adult participant shall not be allowed to handle the package again.
2. The packages that have been opened and appear to be resecured by adults shall be tested by children according to the child-test procedures to determine if the packages have been properly resecured. The packages are given to the children without being opened or resecured again for any purpose.
3. Using the results of the adult tests and the tests of apparently-resecured packaging by children, the adult use effectiveness is calculated as follows:

a. *Adult use effectiveness.*

1. The number of adult opening and resecuring failures, plus the number of packages that were opened by the children during the full 10-minute test that exceeds 20% of the apparently-resecured packages, equals the total number of failures.
2. The total number of packages tested by adults (which is 100) minus the total number of failures equals the percent adult-use effectiveness.

(3) Report format for adult-resecuring test.

A. Identification

1. Close-up color photograph(s) clearly identifying the package and showing the top of the closure.
2. Product name and the number of tablets or capsules in the package.
3. Product manufacturer.
4. Closure model (trade name).
5. Closure size (e.g., 28 mm).
6. Closure manufacturer.
7. Closure material and color(s) (e.g., white polypropylene)
8. Closure liner material.
9. Symbols, numbers, and letters found inside the closure.
10. TAC seal material.
11. Opening instructions (Quote exactly, e.g., ''WHILE PUSHING, DOWN, TURN RIGHT''). Commas are used to separate words that are on different lines.
12. Package model.
13. Package material and color.
14. Net contents.
15. Symbols, numbers, and letters on the bottom of the package.
16. Other product identification, e.g., EPA Registration Number.

B. Procedures

1. Describe all procedures for preparing the test packages.
2. Describe the testing procedures in detail.
3. Describe all instructions given to participants.
4. Define an individual package failure and the procedures for determining a failure.

C. Results

Adult Test

1. Total packages opened and total packages resecured; packages opened by males and by females; and packages resecured by males and by females.
2. Mean opening times and standard deviation for total openings, total openings by females, and total openings by males.
3. Mean resecuring times and standard deviation for total resecurings, total resecurings by females and total resecurings by males.
4. The percentage of packages tested at each site as a percentage of total packages.
5. The percentage of packages tested by each tester as a percentage of total packages.
6. Methods of opening (e.g., normal opening, pried closure off, etc.)

Child Test

1. Openings in each 5-minute period, and total openings, for males and females in each age group.
2. Opening methods.
3. Mean opening times and standard deviation for each 5-minute test period.
4. The percentage of packages tested at each site as a percentage of total packages.
5. The percentage of packages tested by each tester as a percentage of total packages.

(4) Consent forms. The Commission uses the following consent forms for senior-adult testing reclosable and unit-dose packaging, respectively.

1. *Reclosable packages.*

[Testing Organization's Letterhead]

Child-Resistant Package Testing

The U.S. Consumer Product Safety Commission is responsible for testing child-resistant packages to make sure they protect young children from medicines and dangerous household products. With the help of people like you, manufacturers are able to improve the packages we use, keeping the contents safe from children but easier for the rest of us to open.

Effective child-resistant packages have prevented thousands of poisonings since the Poison Prevention Act was passed in 1970. The use of child-resistant packages on prescription medicines alone may have saved the lives of over 350 children since 1974.

As part of this program, we are testing a child-resistant package to determine if it can be opened and properly closed by an adult who is between 50 and 70 years of age. You may or may not be familiar with the packages we are testing. Take your time, and please do not feel that you are being tested—we are testing the package, not you.

Description of the Test

1. I will give you a package and ask you to read the instructions and open and properly close the package.
2. I will then give you an identical package, and ask you to open and properly close it.
3. I may ask you to open some other types of packages.
4. The packages may be empty or they may contain a product.
5. I will ask you whether you think the child-resistant package was easy or hard to use.

Consent Form for Child-Resistant Package Testing

The Consumer Product Safety Commission has been using contractors to test child-resistant packages for many years with no injuries to anyone, although it is possible that a minor injury could happen.

I agree to test a child-resistant package. I understand that I can change my mind at any time. I am between the ages of 50 and 70, inclusive.

Birthdate _____
Signature _____
Date _____
Zip Code _____

Office Use

Site: _____
Sample Number: _____
Test Number: _____
Package Number: _____

2. Unit-dose packages.

[Testing Organization's Letterhead]

Unit Dose Child-Resistant Package Testing

The U.S. Consumer Product Safety Commission is responsible for testing child-resistant packages to make sure they protect young children from medicines and dangerous household products. With the help of people like you, manufacturers are able to improve the packages we use, keeping the contents safe from children but easier for the rest of us to open.

Effective child-resistant packages have prevented thousands of poisonings since the Poison Prevention Act was passed in 1970. The use of child-resistant packages on prescription medicines alone may have saved the lives of over 350 children since 1974.

As part of this program, we are testing a child-resistant package to determine if it can be opened by an adult who is between 50 and 70 years of age. You may or may not be familiar with the packages we are testing. Take your time, and please do not feel that you are being tested—we are testing the package, not you.

Description of the Test

1. I will give you a package and ask you to read the instructions, open one unit, and remove the contents.
2. I will then give you an identical package, and ask you to open one unit and remove the contents.
3. I may ask you to open some other types of packages.
4. I will ask you whether you think the child-resistant package was easy or hard to use.

Consent Form for Child-Resistant Package Testing

The Consumer Product Safety Commission has been using contractors to test child-resistant packages for many years with no injuries to anyone, although it is possible that a minor injury could happen.

I agree to test a child-resistant package. I understand that I can change my mind at any time. I am between the ages of 50 and 70, inclusive.

Birthdate _____
Signature _____
Date _____
Zip Code _____

Office Use

Site: _____
Sample Number: _____
Test Number: _____
Package Number: _____

§ 1700.14 [Amended]

5. Section 1700.14(a) introductory text is amended by inserting ''meeting the requirements of § 1700.20(a)'' after ''is such that special packaging''.

Dated: July 11, 1995.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Appendix I—List of Relevant Documents

(This Appendix will not be printed in the Code of Federal Regulations.)

1. Woodson, W.E. & Conover, D.W. (1964). Human Engineering Guide for Equipment Designers. (2d. ed). Berkeley: University of California Press.

2. Sheffner, A. Leonard, PhD, ASTM IV A, Non-Reclosable CR pouch with internal (hidden) tear notch opening Packaging, Child and Adult Protocol Tests, Foster D. Snell, Inc, Florham Park, New Jersey 07932, December 1, 1972. (May contain confidential information.)

3. Breault, H.J., ''Five Years with 5 Million Child-Resistant Containers,'' Windsor Poison Control Center, Windsor, Ontario, Canada, Clinical Toxicology 7(1), pp. 91–95, 1974.

4. Sheffner, A. Leonard, PhD, ASTM IV A, Non-Reclosable CR pouch (PP/PE/F/PE) with internal (hidden) tear notch opening Packaging, Child and Adult Protocol Tests, Foster D. Snell, Inc, Florham Park, New Jersey 07932, March 10, 1975. (May contain confidential information.)

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236. Fay H. Dworkin and Marcia Robins, EC, ''Protocol Revisions: Final Economic Reports,'' November 18, 1994.

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290. Suzanne Barone, ''Response to Additional Comments on the Proposal to Revise the Child-Resistant Packaging Test Protocols,'' May 25, 1995.

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298. Memorandum from Ronald L. Medford and Suzanne Barone to the Commission, ''Poison Prevention Packaging Act Protocol Revisions—Sequential Test Method for Measuring Adult-Use-Effectiveness,'' June 6, 1995 (forwarding No. 297).

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300. Letter from James D. Cope, President, NDMA, to CPSC Chairman Ann Brown, June 15, 1994.

301. Letter from Charles Jacobson to CPSC Chairman Ann Brown, June 16, 1995.

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Friday
July 21, 1995

Part III

Federal Trade Commission

16 CFR Parts 1, 2, 3, and 4
Rules of Practice Amendments; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 1, 2, 3, and 4

Rules of Practice Amendments

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Rules of Practice to adapt them to the Federal Trade Commission Act Amendments of 1994. This action conforms the Commission's Rules of Practice to certain statutory changes and provides guidance to the public.

EFFECTIVE DATE: July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Joyce Plyler, Attorney, Office of General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202–326–2155.

SUPPLEMENTARY INFORMATION: On August 26, 1994, the President signed into law the ''Federal Trade Commission Act Amendments of 1994,'' Pub. L. 103–312, 108 Stat. 1691 (1994 Amendments), by which the Congress reauthorized the Federal Trade Commission and further defined or altered the Commission's authority. The 1994 Amendments make it necessary or appropriate to revise certain of the agency's Rules of Practice. These rule revisions relate solely to agency practice and, thus, are not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), nor to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). The Paperwork Reduction Act, 44 U.S.C. 3501, does not apply because these revisions do not contain requirements for information collection subject to approval of the Office of Management and Budget. Although the rule revisions are effective immediately, the Commission welcomes comment on them and will consider further revision, as appropriate.

I. Analysis

1. Deletion of Section 1.17

Section 1.17 is being removed in accordance with section 3 of the 1994 Amendments, which deletes section 18(h) of the FTC Act, 15 U.S.C. 57a. That section permitted the Commission to provide, in certain circumstances, compensation for attorney's fees and other costs incurred by participants in rulemaking proceedings.

2. Addition to Section 2.7

Section 7 of the 1994 Amendments broadens the Commission's investigatory authority by authorizing it to issue civil investigative demands (CIDs) for tangible things, and to use CIDs in antitrust investigations. The Commission is adding a new subsection (2) to § 2.7(b) of the rules, to extend CID authority to tangible items. The new subsection parallels existing rules that apply to demands for other materials. Cross-references in other subsections are renumbered. No rule change is necessary to implement the extension of the Commission's authority to use CIDs in antitrust investigations.

3. Revisions Relating to Stays of Orders

The 1994 Amendments make any cease and desist order that is adjudicated under section 5 of the FTC Act effective 60 days after service, except for divestiture provisions,[1] unless the order is stayed by the Commission or a court. The Commission is adding a new § 3.56 to incorporate this statutory change and to establish procedural rules for stay applications. Section 3.56 requires that applications must be submitted within 30 days of service of the order. This time limit will help ensure that a Commission resolution of the request for a stay can be made before the order goes into effect and before a petition for judicial review must be filed. The rule also specifies that applications shall state the reasons for a stay and shall be supported by affidavits or other sworn statements, with attachments from the record where relevant.

In addition, applications must address the likelihood of the applicant's success on appeal, whether the applicant will suffer irreparable harm if a stay is not granted, the degree of injury to other parties if a stay is granted, and why the stay is in the public interest. These questions are based on the traditional four-part test that courts, as well as agencies governed by the Administrative Procedure Act, have applied in determining requests for stays of orders. *See, e.g., Hilton* v. *Braunskill,* 481 U.S. 770, 776 (1987); In re Chicago Mercantile Exchange, Board of Trade of the City of Chicago, and Investment Company Institute, Securities Exchange Act Release No. 26811 (May 12, 1989). The Commission previously has stated that this four-part test is the appropriate standard for stay applications under the FTC Act. *See* Order Denying Respondent's Motion to Stay Enforcement, *Trans Union Corp.,* D. 9255 (Dec. 5, 1994).

Section 3.56 also requires that service of applications be made in the same fashion as in adjudicative proceedings, to ensure that applications are filed with the Secretary of the Commission as well as the relevant staff. An answer to an application may be filed within 5 business days of receipt of the application, and a reply (limited to new matters raised in the answer) may be filed within 3 business days of receipt of the answer. These short time frames take into account that the Commission will undertake to rule on the application within 30 days, after which, if the Commission has not acted, or the application is denied, the applicant may request a stay from the court in which an appeal is pending. Specifically allowing replies, and limiting them to new matters raised in the answer, will deter submission of repetitious filings.

The Commission is also adding a provision to § 4.7(e) concerning *ex parte* communications, specifying that the requirements of Rule 4.7 are to be observed with respect to stay applications. In § 4.7(f), the Commission clarifies that the *ex parte* rules are not applicable to communications regarding preparations for judicial review.

In addition, the Commission is revising Rule 2.41 pertaining to the filing of compliance reports, to state that neither the filing of an application for a stay nor of a petition for review will operate to delay the required date for filing a compliance report. Compliance reports will be delayed only to the extent that an order is stayed automatically by statute, by order of the Commission or a court, or as otherwise permitted under the rules.

Finally, the Commission is clarifying that applications for stays and subsequent, related filings (as well as petitions for reconsideration) will be placed on the public record, pursuant to § 4.9(b). Requests for confidential treatment of material submitted with stay applications will be determined as provided in § 4.9(c)(1).

4. Revisions Affecting Custody of Tangible Things

Section 8 of the 1994 Amendments amended section 20 of the FTC Act regarding the Commission's custody of tangible things. To accommodate submissions of tangible items, the

[1] Pursuant to amended section 5(g) of the FTC Act, the automatic stay still applies to ''an order provision requiring a person, partnership or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order has been filed * * *.'' Divestiture provisions retain the automatic stay because of their substantial impact on business operations. *See* S. Rep. No. 130, 103d Cong., 1st Sess. 11 (1993); H. Rep. No. 138, 103d Cong., 1st Sess. 13 (1993). Other provisions of the order are not automatically stayed. The Commission notes that order paragraphs containing divestiture provisions may also contain other provisions, such as hold-separate requirements or asset-preservation provisions, which do not have the same impact as divestiture requirements and which, therefore, are not automatically stayed.

Commission is making a number of technical revisions to § 3.45, 4.9, 4.10, 4.11, and 4.12.[2] The most prevalent change is that, where appropriate, the word ''material'' is substituted for ''documents,'' ''documents and testimony,'' and ''information''.

Some portions of the rules, most notably in § 4.10(a), are based on the Freedom of Information Act (FOIA), 5 U.S.C. 552, which has been interpreted not to cover tangible items.[3] Thus, references to ''records'' in provisions that are founded on the FOIA are not intended to be read any broader than the FOIA itself. However, other provisions of the rules use ''records'' and ''public records'' in a manner indicating, by their context, that tangible items should be included. To avoid potential confusion over whether the word ''record'' does or does not include tangible items, the revisions distinguish between a ''record,'' which includes only compilations of information, such as in a document or transcript, and ''the public record,'' a term of art that could include anything available to the public, including tangible items. Thus, in some cases, the word ''records'' is changed to ''material'' to indicate that tangible items are included, and the phrase, ''public records'' is changed to ''the public record'' in places where that term of art is more appropriate.

Some rule provisions arise from section 21 of the FTC Act and already refer to ''material.'' The definition of ''material'' in section 21(a) of the FTC Act was amended by the 1994 Amendments to include tangible items. Thus, those provisions may be read to include tangible items. In addition, because the definition of ''material'' in section 21(a) also includes transcripts of oral testimony, the Commission is deleting the parenthetical references to transcripts of oral testimony because they are superfluous. These deletions are not intended to exclude transcripts of oral testimony from the word ''material.'' On the contrary, the Commission intends ''material'' to include transcripts of oral testimony wherever that term is used.

[2] Unrelated to the 1994 Amendments, the Commission is deleting the second sentence of § 3.45(c) because it is unnecessary. The Commission also is making some minor editorial changes to the general paragraphs in § 4.9(a), which are not substantive but merely clarify the Commission's organization of its materials. The Commission also is correcting some of the categorizations and parenthetical cross-references in § 4.9(b).

[3] *Matthews* v. *United States Postal Serv.*, No. 92–1208, slip op. at 4, n. 3 (W.D. Mo. Apr. 14, 1994) (computer hardware not ''record''); *Nichols* v. *United States*, 325 F. Supp. 130, 135–36 (D.Kan. 1971) (guns, bullets, and clothing held not ''records''), *aff'd on other grounds*, 460 F.2d 671 (10th Cir.), *cert. denied*, 409 U.S. 966 (1972).

List of Subjects

16 CFR Part 1

Administrative practice and procedure, Advisory opinions, Rulemaking, Trade regulation rules.

16 CFR Part 2

Administrative practice and procedure, Investigations.

16 CFR Part 3

Administrative practice and procedure, Investigations.

16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act, Privacy Act, Sunshine Act.

Accordingly, the Federal Trade Commission amends title 16, Chapter I, subchapter A of the Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

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

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

§ 1.17 [Removed and reserved]

2. Section 1.17 is removed and reserved.

PART 2— NONADJUDICATIVE PROCEDURES

3. The authority for part 2 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

§ 2.7 [Amended]

4. In the last sentence of § 2.7(b)(1), remove the reference ''20(c)(10)'' and add, in its place, ''20(c)(11)''.

§ 2.7 [Amended]

5. In the last sentence of § 2.7(b)(2), remove the reference ''20(c)(11)'' and add, in its place, ''20(c)(13)''.

§ 2.7 [Amended]

6. In the last sentence of § 2.7(b)(3), remove the reference ''20(c)(12)'' and add, in its place, ''20(c)(14)''.

7. In § 2.7, paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4), respectively, and new paragraph (b)(2) is added to read as follows:

§ 2.7 Compulsory process in investigations.

* * * * *

(b) *Civil investigative demands.* * * *

(2) Civil investigative demands for tangible things will describe each class of tangible things to be produced with such definiteness and certainty as to permit such things to be fairly identified, prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted, and identify the custodian to whom such things shall be submitted. Submission of tangible things in response to a civil investigative demand shall be made in accordance with the procedures prescribed by section 20(c)(12) of the Federal Trade Commission Act.

* * * * *

8. Section 2.41(a) is revised to read as follows:

§ 2.41 Reports of compliance.

(a) In every proceeding in which the Commission has issued an order pursuant to the provisions of section 5 of the Federal Trade Commission Act or section 11 of the Clayton Act, as amended, and except as otherwise specifically provided in any such order, each respondent named in such order shall file with the Commission, within sixty (60) days after service thereof, or within such other time as may be provided by the order or the rules in this chapter, a report in writing, signed by the respondent, setting forth in detail the manner and form of his compliance with the order, and shall thereafter file with the Commission such further signed, written reports of compliance as it may require. Reports of compliance shall be under oath if so requested. Where the order prohibits the use of a false advertisement of a food, drug, device, or cosmetic which may be injurious to health because of results from its use under the conditions prescribed in the advertisement, or under such conditions as are customary or usual, or if the use of such advertisement is with intent to defraud or mislead, or in any other case where the circumstances so warrant, the order may provide for an interim report stating whether and how respondents intend to comply to be filed within ten (10) days after service of the order. Neither the filing of an application for stay pursuant to § 3.56, nor the filing of a petition for judicial review, shall operate to postpone the time for filing a compliance report under the order or this section. If the Commission, or a court, determines to grant a stay of an order, or portion thereof, pending judicial review, or if any order provision is automatically stayed by statute, no compliance report shall be due as to those portions of the order that are stayed unless ordered by the court. Thereafter, as to orders, or portions thereof, that are stayed, the time for filing a report of compliance shall begin

to run de novo from the final judicial determination, except that if no petition for certiorari has been filed following affirmance of the order of the Commission by a court of appeals, the compliance report shall be due the day following the date on which the time expires for the filing of such petition. Staff of the Bureaus of Competition and Consumer Protection will review such reports of compliance and may advise each respondent whether the staff intends to recommend that the Commission take any enforcement action. The Commission may, however, institute proceedings, including certification of facts to the Attorney General pursuant to the provisions of section 5(l) of the Federal Trade Commission Act (15 U.S.C. 45(l)) and section 11(1) of the Clayton Act, as amended (15 U.S.C. 21(1)), to enforce compliance with an order, without advising a respondent whether the actions set forth in a report of compliance evidence compliance with the Commission's order or without prior notice of any kind to a respondent.

* * * * *

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

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

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

10. In § 3.45 paragraphs (a), (b), and (c) are revised to read as follows:

§ 3.45 In camera orders.

(a) *Definition.* Except as hereinafter provided, material made subject to an in camera order will be kept confidential and not placed on the public record of the proceeding in which it was submitted. Only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review may have access thereto, provided that the Administrative Law Judge, the Commission and reviewing courts may disclose such in camera material to the extent necessary for the proper disposition of the proceeding.

(b) *In camera treatment of material.* The Administrative Law Judge may order material, or portions thereof, offered into evidence, whether admitted or rejected, to be placed in camera on a finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting their in camera treatment. This finding shall be based on the standard articulated in H.P. Hood & Sons, Inc., 58 F.T.C. 1184, 1188 (1961); see also Bristol-Myers Co., 90 F.T.C. 455, 456 (1977), which established a three-part test that was modified by General Foods Corp., 95 F.T.C. 352, 355 (1980). No material, or portion thereof offered into evidence, whether admitted or rejected, may be withheld from the public record unless it falls within the scope of an order issued in accordance with this section, stating the date on which in camera treatment will expire, and including:

(1) A description of the material;

(2) A statement of the reasons for granting in camera treatment; and

(3) A statement of the reasons for the date on which in camera treatment will expire. Such expiration date may not be omitted except in unusual circumstances, in which event the order shall state with specificity the reasons why the need for confidentiality of the material, or portion thereof at issue is not likely to decrease over time, and any other reasons why such material is entitled to in camera treatment for an indeterminate period. Any party desiring, in connection with the preparation and presentation of the case, to disclose in camera material to experts, consultants, prospective witnesses, or witnesses, shall make application to the Administrative Law Judge setting forth the justification therefor. The Administrative Law Judge, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. Material subject to an in camera order shall be segregated from the public record and filed in a sealed envelope, or other appropriate container, bearing the title, the docket number of the proceeding, the notation ''In Camera Record under § 3.45,'' and the date, if any, on which in camera treatment expires.

(c) *Release of in camera material.* In camera material constitutes part of the confidential records of the Commission and is subject to the provisions of § 4.11 of this chapter.

* * * * *

11. Section 3.56 is added to subpart F to read as follows:

§ 3.56 Effective date of orders; application for stay.

(a) Other than consent orders, an order to cease and desist under section 5 of the FTC Act becomes effective upon the sixtieth day after service, except as provided in section 5(g)(3) of the FTC Act, and except for divestiture provisions, as provided in section 5(g)(4) of the FTC Act.

(b) Any party subject to a cease and desist order under section 5 of the FTC Act, other than a consent order, may apply to the Commission for a stay of all or part of that order pending judicial review. If, within 30 days after the application was received by the Commission, the Commission either has denied or has not acted on the application, a stay may be sought in a court of appeals where a petition for review of the order is pending.

(c) An application for stay shall state the reasons a stay is warranted and the facts relied upon, and shall include supporting affidavits or other sworn statements, and a copy of the relevant portions of the record. The application shall address the likelihood of the applicant's success on appeal, whether the applicant will suffer irreparable harm if a stay is not granted, the degree of injury to other parties if a stay is granted, and why the stay is in the public interest.

(d) An application for stay shall be filed within 30 days of service of the order on the party. Such application shall be served in accordance with the provisions of § 4.4(b) of this part that are applicable to service in adjudicative proceedings. Any party opposing the application may file an answer within 5 business days after receipt of the application. The applicant may file a reply brief, limited to new matters raised by the answer, within 3 business days after receipt of the answer.

PART 4—MISCELLANEOUS RULES

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

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

13. Section 4.7 is amended by adding a new sentence at the end of paragraph (e) and by revising the first sentence of paragraph (f) to read as follows:

§ 4.7 Ex parte communications.

* * * * *

(e) * * * In addition, the prohibitions of this section shall apply with respect to communications concerning an application for stay filed with the Commission pursuant to § 3.56 from the time that the application is filed until its disposition.

(f) The prohibitions of paragraph (b) of this section do not apply to a communication occasioned by and concerning a nonadjudicative function of the Commission, including such functions as the initiation, conduct, or disposition of a separate investigation, the issuance of a complaint, or the initiation of a rulemaking or other proceeding, whether or not it involves a party already in an adjudicative proceeding; preparations for judicial review of a Commission order; a

proceeding outside the scope of § 3.2, including a matter in state or federal court or before another governmental agency; * * *

14. In § 4.9, the heading and paragraphs (a)(1) through (a)(3) are revised to read as follows:

§ 4.9 The public record.

(a) General. (1) Materials on the public record of the Commission are available for public inspection and copying either routinely or upon request.

(2) Materials that are exempt from mandatory public disclosure, or are otherwise not available from the Commission's public record, may be made available for inspection and copying only upon request under the procedures set forth in § 4.11 of this part, or as provided in §§ 4.10 (d) through (g), 4.13, and 4.15(b)(3) of this part, or by the Commission.

(3) Location. Materials on the public record are available for inspection at the principal office of the Commission, and copies of some of those records are available at the regional offices, on each business day from 9 a.m. to 5 p.m.

* * * * *

§ 4.9 [Amended]

15. Section 4.9(b) is amended by revising the heading and introductory text, the heading of paragraph (b)(3), the heading and text of paragraphs (b)(5) and (b)(6), and the heading of paragraph (b)(8) to read as follows:

* * * * *

(b) *Categories.* Except to the extent material is confidential, as provided in paragraph (c) of this section, the public record of the Commission includes, but is not necessarily limited to:

* * * * *

(3) *Rulemaking (16 CFR 1.7 through 1.26).* * * *

* * * * *

(5) *Adjudicative proceedings, stay applications, requests to reopen, and litigated orders. (16 CFR 2.51, 3.1 through 3.24, 3.31 through 3.56, 3.71 through 3.72, 4.7)*—Except for transcripts of matters heard in camera pursuant to § 3.45 and material filed in camera pursuant to §§ 3.22, 3.24, 3.45, 3.46, 3.51 and 3.52,

(i) The versions of pleadings and transcripts of prehearing conferences to the extent made available under § 3.21(e), motions, certifications, orders, and the transcripts of hearings (including public conferences), testimony, oral arguments, and other material made a part thereof, and exhibits and material received in evidence or made a part of the public record in adjudicative proceedings;

(ii) Initial decisions of administrative law judges;

(iii) Orders and opinions in interlocutory matters;

(iv) Final orders and opinions in adjudications, and rulings on stay applications, including separate statements of Commissioners;

(v) Petitions for reconsideration, and answers thereto, filed pursuant to § 3.55;

(vi) Applications for stay, answers thereto, and replies, filed pursuant to § 3.56;

(vii) Petitions, applications, pleadings, briefs, and other records filed by the Commission with the courts in connection with adjudicative, injunctive, enforcement, compliance, and condemnation proceedings, and in connection with judicial review of Commission actions, and opinions and orders of the courts in disposition thereof;

(viii) Records of ex parte communications in adjudicative proceedings and stay applications;

(ix) Petitions to reopen proceedings and orders to determine whether orders should be altered, modified, or set aside in accordance with § 2.51; and

(x) Decisions reopening proceedings, and orders to show cause under § 3.72.

(6) *Consent Agreements (16 CFR 2.31 through 2.34, 3.25).* (i) Agreements containing orders, after acceptance by the Commission pursuant to §§ 2.34 and 3.25(f) of this chapter;

(ii) Comments filed under §§ 2.34 and 3.25(f) of this chapter concerning proposed consent agreements; and

(iii) Final decisions and orders issued after the comment period prescribed in §§ 2.34 and 3.25(f), including separate statements of Commissioners.

* * * * *

(8) *Access to Documents and Meetings (16 CFR 4.8, 4.11, 4.13, 4.15).* * * *

* * * * *

§ 4.9 [Amended]

16. Section 4.9(c) is amended by revising the heading, the first sentence of paragraph (c)(1), and paragraphs (c)(2) and (c)(3) to read as follows:

* * * * *

(c) *Confidentiality and in camera material.* (1) Persons submitting material to the Commission described in this section may designate that material or portions of it confidential and request that it be withheld from the public record. * * *

(2) Motions seeking in camera treatment of material submitted in connection with a proceeding under part 3 of these rules, except stay applications under § 3.56, shall be filed with the Administrative Law Judge who is presiding over the proceeding. Requests for confidential treatment of material submitted in connection with a stay application shall be made in accordance with § 4.9(c)(1).

(3) To the extent that any material or portions of material otherwise falling within § 4.9(b) contain information that is not required to be made public under § 4.10 of this part, the General Counsel may determine to withhold such materials from the public record.

17. Section 4.10 is amended by revising the heading, paragraph (a) introductory text, paragraphs (a)(8) through (a)(11), and paragraphs (d), (e), (f), and (g), introductory text and concluding text, to read as follows:

§ 4.10 Nonpublic material.

(a) The following records and other material of the Commission are not required to be made public pursuant to 5 U.S.C. 552.

* * * * *

(8) Material, as that term is defined in section 21(a) of the Federal Trade Commission Act, which is received by the Commission:

(i) In an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission; and

(ii) Which is provided pursuant to any compulsory process under the Federal Trade Commission Act, 15 U.S.C. 41, et seq., or which is provided voluntarily in place of compulsory process in such an investigation. *See* section 21(f) of the Federal Trade Commission Act.

(9) Material, as that term is defined in section 21(a) of the Federal Trade Commission Act, which is received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission. *See* section 21(b)(3)(C) of the Federal Trade Commission Act.

(10) Such other material of the Commission as may from time to time be designated by the Commission as confidential pursuant to statute or Executive Order. This exempts from disclosure any information that has been designated nonpublic pursuant to criteria and procedures prescribed by Executive Order and that has not been subsequently declassified in accordance with applicable procedures. The exemption also preserves the full force and effect of statutes that restrict public access to specific government records or material.

(11) Material in an investigation or proceeding that involves a possible

violation of criminal law, when there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the investigation could reasonably be expected to interfere with enforcement proceedings. When a request is made for records under § 4.11(a), the Commission may treat the records as not subject to the requirements of the Freedom of Information Act.

* * * * *

(d) Except as provided in paragraphs (f) and (g) of this section and in § 4.11 (b), (c), and (d), no material which is marked or otherwise identified as confidential and which is within the scope of § 4.10(a)(8) and no material which is within the scope of § 4.10(a)(9) which is not otherwise public shall be made available to any individual other than a duly authorized officer or employee of the Commission or a consultant or contractor retained by the Commission who has agreed in writing not to disclose the information without the consent of the person who produced the material. All other Commission records may be made available to a requester under the procedures set forth in § 4.11 or may be disclosed by the Commission except where prohibited by law.

(e) Except as provided in paragraphs (f) and (g) of this section and in § 4.11 (b), (c), and (d), material not within the scope of § 4.10(a)(8) or § 4.10(a)(9) which is received by the Commission and is marked or otherwise identified as confidential may be disclosed only if it is determined that the material is not within the scope of § 4.10(a)(2), and only if the submitter is provided at least 10 days' notice of the intent to disclose the material involved.

(f) Nonpublic material obtained by the Commission may be disclosed to persons other than the submitter in connection with the taking of oral testimony without the consent of the submitter only if the material or transcript is not within the scope of § 4.10(a)(2). If the material is marked confidential, the submitter will be provided 10 days' notice of the intended disclosure or will be afforded an opportunity to seek an appropriate protective order.

(g) Material obtained by the Commission:

(1) * * *

(2) * * *

(3) * * *

Prior to disclosure of such material in a proceeding, the submitter will be afforded an opportunity to seek an appropriate protective or in camera order. All other material obtained by the Commission may be disclosed in Commission administrative or court proceedings at the discretion of the Commission except where prohibited by law.

18. Section 4.11 is amended by revising the heading, the first sentence in paragraph (b), the first, second and third sentences in paragraph (c), the heading in paragraph (e), and paragraphs (e)(1) through (e)(5) to read as follows:

§ 4.11 Disclosure requests.

* * * * *

(b) *Requests from congressional committees and subcommittees.* Requests from congressional committees and subcommittees for nonpublic material shall be referred to the General Counsel for presentation to the Commission, subject to the provisions in 5 U.S.C. 552(c) and FTC Act 21(b) that neither the Freedom of Information Act, 5 U.S.C. 552, nor the Federal Trade Commission Act, 15 U.S.C. 41, et seq., is authority to withhold information from Congress. * * *

(c) *Requests from Federal and State law enforcement agencies.* Requests from law enforcement agencies of the Federal government shall be addressed to the liaison officer for the requesting agency, or if there is none, to the General Counsel. Requests from state agencies shall be addressed to the General Counsel. With respect to requests under this paragraph, the General Counsel or the appropriate liaison officer is delegated the authority to dispose of them or may refer them to the Commission for determination, except that requests must be referred to the Commission for determination where the Bureau having the material sought and the General Counsel do not agree on the disposition. * * *

* * * * *

(e) *Material and information requested by subpoena in cases or matters to which the agency is not a party.* (1) The procedures specified in this section will apply to all subpoenas directed to Commission employees, except special government employees, that relate in any way to the employees' official duties. These procedures will also apply to subpoenas directed to former Commission employees and current or former special government employees of the Commission, if the subpoenas seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (e)(3) of this section will also apply to subpoenas directed to the agency. For purposes of this section, the term ''subpoena'' includes any compulsory process in a case or matter to which the agency is not a party; the term ''nonpublic'' includes any material or information which, under § 4.10, is not required to be made public; the term ''employees,'' except where otherwise specified, includes ''special government employees'' and other agency employees; and the term ''special government employees'' includes consultants and other employees as defined by section 202 of title 18 of the United States Code.

(2) Any employee or former employee who is served with a subpoena shall promptly advise the General Counsel of the service of the subpoena, the nature of the material or information sought, and all relevant facts and circumstances.

(3) A party causing a subpoena to be issued to the Commission or any employee or former employee of the Commission shall furnish a statement to the General Counsel. The statement shall set forth the party's interest in the case or matter, the relevance of the desired testimony or material, and a discussion of whether it is reasonably available from other sources. If testimony is desired, the statement shall also contain a general summary of the testimony and a discussion of whether agency records could be produced and used in its place. Any authorization for testimony will be limited to the scope of the demand as summarized in such statement.

(4) Absent authorization from the General Counsel, the employee or former employee shall respectfully decline to produce requested material or to disclose requested information. The refusal should be based on this paragraph and on *Touhy* v. *Ragen,* 340 U.S. 462 (1951).

(5) The General Counsel will consider and act upon subpoenas under this section with due regard for statutory restrictions, the Commission's rules and the public interest, taking into account factors such as the need to conserve the time of employees for conducting official business; the need to avoid spending the time and money of the United States for private purposes; the need to maintain impartiality between private litigants in cases where a substantial government interest is not involved; and the established legal standards for determining whether justification exists for the disclosure of confidential information and material.

* * * * *

19. Section 4.12 is amended by revising paragraphs (a) and (c) to read as follows:

§ 4.12 Disposition of material submitted to the Commission.

(a) *Material submitted to the Commission.* (1) Any person who has submitted material to the Commission may obtain, on request, the return of material submitted to the Commission which has not been received into evidence:

(i) After the close of the proceeding in connection with which the material was submitted; or

(ii) When no proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all such material and other information assembled in the course of the investigation.

(2) Such request shall be in writing, addressed to the custodian designated pursuant to § 2.16 or the Secretary of the Commission in all other circumstances, and shall reasonably describe the material requested. A request for return of material may be filed at any time, but material will not be returned nor will commitments to return material be undertaken prior to the time described in this paragraph.

* * * * *

(c) *Disposition of material not returned.* Subsequent to the time prescribed in paragraph (a) of this section, the staff will examine all submitted material and Commission-made copies of documents located in a reasonable search of the Commission's files and will determine, consistent with the Federal Records Act, 44 U.S.C. 3301, which materials are appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Commission or because of the information value of data in them. The Commission will dispose of all material determined not to be appropriate for preservation in accordance with applicable regulations of the National Archives and Records Administration.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–16948 Filed 7–20–95; 8:45 am]

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Friday
July 21, 1995

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AC79

Migratory Bird Hunting; Proposed Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1995-96 early-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the maximum number of birds that may be taken and possessed in early seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population status and habitat conditions.

DATES: The comment period for proposed early-season frameworks will end on July 31, 1995; and for late-season proposals on September 4, 1995. A public hearing on late-season regulations will be held on August 3, 1995, starting at 9 a.m.

ADDRESSES: The August 3 public hearing will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on these proposals and notice of intention to participate in the late-season hearing should be sent in writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1995

On March 24, 1995, the Service published for public comment in the **Federal Register** (60 FR 15642) a proposal to amend 50 CFR part 20. Comment periods were specified to end June 21 and September 4, 1995, respectively. Due to some unforeseen and uncontrollable publishing delays in the proposed early-season regulations framworks, the Service has extended the public comment period to July 31, 1995. On June 16, 1995, the Service published for public comment a second document (60 FR 31890) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 22, 1995, a public hearing was held in Washington, DC, as announced in the March 24 and June 16 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

This document is the third in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for early-season regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1995-96 season. All pertinent comments received through June 22, 1995, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. Final regulatory frameworks for early seasons are scheduled for publication in the **Federal Register** on or about August 16, 1995.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published in the March 24 **Federal Register**. The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available about the status of waterfowl populations and habitat conditions on the breeding grounds.

Presentations at Public Hearing

Four Service employees presented reports on the status of various migratory bird species for which early hunting seasons are being proposed. These reports are briefly reviewed as a matter of public information.

Dr. John Bruggink, Eastern Shore and Upland Game Bird Specialist, reported on the 1995 status of American woodcock. The 1994 recruitment index for the Eastern Region (1.4 immatures per adult female) was 17.6% below the long-term regional average; the recruitment index for the Central Region (1.5 immatures per adult female) was 11.8% below the long-term regional average. Daily hunting success in the Eastern Region decreased from 1.4 woodcock bagged per hunter in 1993 to 1.2 woodcock bagged per hunter in 1994 (-14.3%). The seasonal hunting success index decreased from 6.7 to 5.9 woodcock per hunter (-11.9%). In the Central Region, the daily success index decreased from 1.6 birds per hunter in 1993 to 1.4 birds per hunter in 1994 (-12.5%), and the seasonal success index decreased from 10.0 to 8.7 (-13.0%) woodcock bagged per hunter. Analysis of Singing-ground Survey data indicated that the number of displaying woodcock may have increased between 1994 and 1995 in the Eastern and Central regions (6.9 and 5.6%, respectively). Eleven-year (1985-95) trends from the Singing-ground Survey were negative (-2.0% and -2.8% per year for the Eastern and Central regions, respectively). There were long-term (1968-95) declines of 2.4% per year in the Eastern Region and 1.4% per year in the Central Region.

Mr. David Dolton, Western Shore and Upland Game Bird Specialist, presented the status of the mourning dove population in 1995. The report summarized call-count information gathered over the past 30 years. Trends were calculated for the most recent 2 and 10-year intervals and for the entire 30-year period. Between 1994 and 1995, the average number of doves heard per route declined significantly in the Central Management Unit, but did not change significantly in the Eastern or Western Units. No significant trend was found in doves heard in the Eastern or Central Units for either the 10 or 30-year time frames. In the Western Unit, no trend was evident over the most recent 10 years, but there has been a significant decline over 30 years. Trends for doves seen at the unit level over the 10 and 30-year periods agreed with trends for doves heard.

Mr. Dolton also presented the status of western white-winged doves in Arizona. Since the 1980s, whitewing numbers have remained relatively stable. The 1995 whitewing call-count index of 31.2 doves heard per route was 16 percent above the index in 1994. The harvest has been around 100,000 since 1987. In 1994, an estimated 122,000 birds were harvested.

Mr. Dolton then reported on the status of eastern white-winged doves and white-tipped doves in Texas. Results of the 1994 whitewing call-count survey indicate 440,000 birds were nesting in the Lower Rio Grande Valley Counties of Starr, Hidalgo, Cameron, and Willacy. This is a 28 percent decrease from 1994, but 7.3 percent above the average count of 410,200 for the previous 10 years. In Upper South Texas, an estimated 625,000 whitewings were nesting throughout a 19-county area. This is an 8 percent increase over last year's

population and marks the seventh year of a rapidly expanding population in this portion of the State. West Texas supports a small population of whitewings. The 1995 estimate of 15,700 birds was 7 percent below the 1994 estimate. For white-tipped doves, an average of 0.78 birds were heard per stop in both brush and citrus locations in 1995.

Finally, Mr. Dolton presented population and harvest information on band-tailed pigeons. Band-tailed pigeons are managed as two separate and distinct populations: the Coastal Population (Washington, Oregon, California, and Nevada) and the Four-corners or Interior Population (Utah, Colorado, Arizona, and New Mexico). For the Coastal Population, the Breeding Bird Survey (BBS) indicates that there was a significant decline between 1968 and 1994. However, the population apparently has stabilized in the 10 years from 1985 to 1994. Mineral spring counts conducted in Oregon suggest that bandtails had two precipitous declines (in 1973 and again in 1985). Since 1985, these counts indicate that the population gradually has been increasing, but it remains at a lower level than during the 1970s. Counts at these selected springs in 1994 showed a 73 percent increase in pigeon use over 1993. Washington's call-count has shown a nonsignificant decline in the population from 1975-94. A significant population increase of 71 percent was found between 1993 and 1994. Two indirect population estimates suggest that overall bandtail numbers were between 2.4 and 3.1 million birds in 1992. With bag limits and season length continuing to be restricted, a harvest in 1994 of 5,226 pigeons was estimated for Oregon while a harvest of 11,500 was estimated for California in 1993. Neither Washington nor British Columbia chose to open a bandtail season in 1994. In the Four-corners area, BBS data showed a stable population between 1968 and 1994. The combined harvest for all four States in 1994 was 828 birds.

Dr. Jim Dubovsky, Waterfowl Specialist, presented information on 1995 habitat conditions for waterfowl and preliminary estimates of blue-winged teal abundance and harvests. Across most of the northcentral United States and eastern portions of the prairie provinces in Canada, habitat conditions for nesting ducks generally were good to excellent. Abundant water existed in basins and fields, and land managed in conservation easements in the United States continued to provide good nesting cover. In contrast, western portions of the Canadian provinces were extremely dry, and nesting habitats worsened relative to recent years. The pond estimate for the northcentral United States and prairie Canada combined was 6.3 million. This was the highest estimate since 1979, and was 38% above the long-term average.

The 1995 May breeding population survey yielded an estimate of 5.1 million blue-winged teal, which is similar to the 1994 estimate of 4.6 million, but 23% above the long-term average. The estimated harvest of blue-winged teal during the 1994 September teal season was approximately 272,000 birds, which was 63% higher than that which occurred during the last two teal seasons. However, the 1994 harvest was comparable to historic estimates. The combined special and regular season harvest of all teal last year was 1.4 million, a figure 30% higher than that of recent years, but substantially lower than levels from the 1970s and early 1980s. Harvest rates of blue-winged teal during 1994-95 remained low and were similar to or lower than those which occurred historically.

Mr. David Sharp, Central Flyway Representative, reported on the status and harvests of sandhill cranes. The Mid-Continent Population appears to have stabilized following dramatic increases in the early 1980s. The preliminary 1995 spring index for the Central Platte River Valley, uncorrected for visibility, was 284,800. This index is significantly lower (-30 percent) than the previous year's index of 395,500. However, the photo-corrected 3-year average for the 1991-93 period was 420,866, which was 12 percent above the previous year's 3-year running average and within the established population-objective range of 343,000-465,000 cranes. All Central Flyway States, except Nebraska, elected to allow crane hunting in portions of their respective States in 1994-95; about 19,400 Federal permits were issued and approximately 7,400 permittees hunted one or more times. The number of permittees and active hunters were similar to the previous year's seasons. About 17,300 cranes were harvested in 1994-95, a 4 percent decrease from the previous year's estimate. Harvest information from Alaska, Canada and Mexico are not yet available, but collectively are believed to be about 7,000 during the 1994-95 sport hunting seasons. The total North American sport harvest was estimated to be about 30,000, which is similar to last year's estimate(-4 percent) and near (-7 percent) the all time high recorded in 1990. Annual surveys of the Rocky Mountain Population, which migrates through the San Luis Valley of Colorado in March, suggest that the population has been relatively stable since 1984. The 1995 index of 20,200 cranes was within the established objective range of 18,000-22,000. Limited special seasons were held during 1994 in portions of Arizona, Montana, New Mexico, Utah, and Wyoming, and resulted in an estimated harvest of 671 cranes.

Comments Received at Public Hearing

Ms. Susan Hagood, representing the Humane Society of the U.S., expressed concern about the continuation of seasons on species for which we have little population data. She recommended very restrictive or closed seasons on sea ducks and opposed rapidly increasing bag limits on any species with only one year of data. She further suggested that bag limits on common moorhens, snipe, and gallinules were excessive and encouraged ''target shooting.'' She maintained that the opening of hunting seasons in Alaska should be delayed at least two weeks to allow birds to leave their natal areas. Further, she urged the Service to disallow pre-sunrise shooting.

Mr. Charles D. Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, commended the Service for its management of migratory bird resources. He also indicated that the conservative thought used by the Service in the development of annual migratory bird hunting regulations was shared by the States. As a result of this conservative thought, he reiterated the Service's findings that declines seen in most game species were tied to habitat practices.

Mr. George Vandel, representing the Central Flyway Council and the South Dakota Game Fish and Parks Department, made some preliminary remarks regarding the status of this year's duck breeding populations and nesting conditions in South Dakota. He indicated that this spring's total breeding population was at a high level, with many species at record high levels. He further indicated that many factors contributed to this recovery, including improved precipitation patterns, availability of Conservation Reserve Program lands with high quality nesting cover, and the success of cooperative management programs such as those under the North American Waterfowl Management Plan.

Mr. Vandel then reviewed several recommendations that were passed by the Central Flyway Council. With respect to early season issues, he supported the request to expand the open area for the hunting of Rocky Mountain sandhill cranes in Wyoming and recommended that no other changes

be made in Central Flyway hunting regulations. He indicated that a recently completed shooting hours report had been submitted as requested by the Service, and encouraged the Mississippi Flyway to also complete their report. He supported the use of Adaptive Harvest Management for duck harvest management in 1995 and indicated that this process was the result of good biology. He supported the use of flexible opening and closing framework dates for duck hunting and he indicated that the Service's policy on the use of zones and split seasons needed to be reviewed with the Flyway prior to next year's open season. He also supported the use of the point system in determining daily bag limits for ducks, and he indicated that the Flyway would work with the Service in identification of additional opportunities for the hunting of blue-winged teal and redheads. He noted that the Flyway had considered recent recommendations from a review of the Flyway Council system and would provide comment during this fall's meeting of the International Association of Fish and Wildlife Agencies. Regarding the Memorandum of Understanding (MOU) for Flyway Consultants, he indicated that the Central Flyway Council had forwarded copies of proposed changes in the MOU and encouraged the Service to continue working with the other Flyway Councils in completing necessary revisions. Finally, he indicated that the Central Flyway Council will consider the issue of compensatory days for Sunday hunting for this year's late-season meetings.

Written Comments Received

The preliminary proposed rulemaking, which appeared in the March 24 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. As of June 22, 1995, the Service had received 15 comments; 4 of these specifically addressed early-season issues. These early-season comments are summarized below and numbered in the order used in the March 24 **Federal Register**. Only the numbered items pertaining to early seasons for which written comments were received are included. The Service received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is also assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

G. Special Seasons/Species Management

ii. September Teal Seasons

Council Recommendations: The Central Flyway Council recommended that the September teal season in the Central Flyway be increased from 9 to 16 days.

Written Comments: An individual from Texas expressed support for the Central Flyway's recommendation to expand the teal season to 16 days. Stating that the early teal season is important for Texas hunter opportunities, he believed that the season could be expanded without harm to the resource.

Service Response: A body of information exists regarding September teal seasons as currently structured; however, there is little information to address the potential impacts of 7 days added to the current season. The Service previously determined in the ''Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88)'' that proposals for expansion of existing special regulations require a comprehensive evaluation plan containing study objectives, experimental design, decision criteria, and identification of data needs. The Central Flyway's proposal does not contain such a plan and is therefore inconsistent with SEIS 88. Any large-scale expansion of the September teal season, such as that recommended by the Central Flyway Council, likely will require a complete evaluation of the entire season in all areas where the teal season is currently offered. Future consideration by the Service of such a proposal, and accompanying evaluation plan, will also include a review of manpower and funding requirements as well as priority ranking relative to other proposals and programs.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Delaware and Rhode Island be permitted to initiate a 3-year experimental resident Canada goose season with framework dates of September 1 to 15.

The Atlantic Flyway Council also recommended that Massachusetts, New Jersey, New York, North Carolina, Pennsylvania, and Virginia be permitted to expand the hunt areas of their experimental goose seasons.

In North Carolina, the Atlantic Flyway Council requested that the framework date for the experimental resident Canada goose season in the Northeast hunt area be September 1 to 20.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended modification of the early Canada goose season criteria to allow any State to conduct a non-experimental special season between the dates of September 1 and 15. The Committee recommended that States continue monitoring hunter activity and success until they begin participation in the Harvest Information Program and close areas where evidence from band recoveries or other sources indicated unacceptable (greater than 10 percent) harvest of non-target populations of concern. Special seasons occurring after September 15 would be required to meet all existing Service criteria for special resident Canada goose seasons and would not be altered in any way during the 3-year experimental period.

If the above modifications to the special-season criteria are not approved, the Upper-Region Regulations Committee recommended the following experimental special seasons:

In Indiana, a Statewide season during September 1 to 15.

In Illinois, a season in the nine northeast counties of the State during September 9 to 18.

In Wisconsin, expand the size of the Southeastern Zone for a September 1 to 13 season.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the flyway-wide framework for special resident giant Canada goose seasons be September 1 to 15 where areas of concern do not exist.

In Tennessee, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the zone for the special resident Canada goose season in east Tennessee be expanded from 11 to 28 counties, east of and including Anderson, Campbell, Hamilton, Rhea, and Roane Counties. The Committee also recommended that Tennessee be permitted to hold a special September

Canada goose season in the Kentucky/Barkley Lakes Zone in west Tennessee.

The Pacific Flyway Council requested modification of the early Canada goose seasons criteria to allow any State to conduct a season between the dates of September 1 and 15 for a 3-year experimental period. The Council recommended that States continue monitoring hunter activity and success until they begin participation in the Harvest Information Program and close areas where evidence from band recoveries or other sources indicated unacceptable (greater than 10 percent) harvest of non-target populations of concern. Special seasons occurring after September 15 would be required to meet all existing Service criteria for special Canada goose seasons and would not be altered in any way during the 3-year experimental period.

The Pacific Flyway Council recommended continuation of the early September Canada goose season in southwestern Wyoming and that an experimental hunt be allowed in Teton County, Wyoming, where it would be by State permit (no more than 40 permits may be issued) with framework dates of September 1 to 15 and a maximum limit of 2 Canada geese permitted per season.

Written Comments: The Illinois Department of Conservation supported the Service's proposal to allow September 1 to 15 Canada goose seasons without requiring the data collection necessary under the Service's special Canada goose season criteria. They noted that this would free States from the constraints of gathering data, which can be difficult and expensive to obtain, and would allow greater management flexibility. Further, believing that the lack of harvest of migrants during these special seasons has been documented, they stated that these special seasons are an important component of their urban/suburban goose programs.

Service Response: The Service has reviewed the existing information from experimental special early Canada goose seasons and has concluded that the proposed modifications will meet the established criteria while reducing the cost and administrative burden of these seasons; however, the Service reaffirms its previously stated commitment to target these special seasons at locally breeding and/or nuisance Canada goose populations that nest primarily in the conterminous United States. The Service proposes to modify the criteria for special Canada goose seasons to permit States to chose one of two options for these special seasons:

Option 1: States (except Alaska and Hawaii) may hold a special early Canada goose season of up to 15 days between the dates of September 1 and September 15. Such a season must receive Flyway Council endorsement prior to the establishment of federal frameworks, and States must agree to close any areas to hunting where evidence from band recoveries or other sources indicates unacceptable (greater than 10%) harvest of non-target populations during the special season. The Counties of Tuscola, Huron and Saginaw in Michigan are not eligible for this option because evidence of excessively high harvests of Southern James Bay Canada geese was obtained in a previous experimental evaluation. Additionally, because of evidence suggesting early-arriving migrant Canada geese, the special early Canada goose season in the Upper Peninsula of Michigan cannot extend beyond September 10.

Option 2: States may hold a special early Canada goose season that would include dates after September 15, except in those areas identified in Option 1. Such a season would be subject to all data-gathering, monitoring and reporting requirements in the special-season criteria. Additionally, such a season would not be subject to any modification during the experimental period.

The Service also proposes that when the criteria for special Canada goose seasons are modified, no additional modifications will be considered for at least five years, to allow sufficient time for evaluation of cumulative impacts.

The special-season criteria, including the modifications indicated above, are shown below:

Criteria for Special Canada Goose Seasons

1. States may hold special Canada goose seasons, in addition to their regular seasons, for the purpose of controlling local breeding populations or nuisance geese. These seasons are to be directed only at Canada goose populations that nest primarily in the conterminous United States and must target a specific population of Canada geese. The harvest of nontarget Canada geese must not exceed 10 percent of the special-season harvest during early seasons or 20 percent during late seasons. More restrictive proportions may apply in instances where a nontarget Canada goose population of special concern is involved.

2. Early seasons must be held prior to the regular season.

3. Late seasons must be held after the regular season but no later than February 15.

4. The daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

5. The area(s) open to hunting will be described in State regulations.

6. For seasons that include hunting days after September 15:

A. All seasons will be conducted under a specific Memorandum of Agreement (Agreement). Provisions for discontinuing, extending, or modifying the seasons will be included in the Agreement.

B. All seasons initially will be considered experimental. The evaluation required of the State will be incorporated into the Agreement and will include at least the following:

(a) Conduct neck-collar observations (where appropriate) and population surveys beginning at least 2 years prior to the requested season and continuing during the experiment.

(b) Determine derivation of neck-collar codes and/or leg-band recoveries from observations and harvested geese.

(c) Collect morphological information from harvested geese, where appropriate, to ascertain probable source population(s) of the harvest.

(d) Analyze relevant band-recovery data.

(e) Estimate hunter activity and harvest.

(f) Prepare annual and final reports of the experiment.

C. If the results of the evaluation warrant continuation of the season beyond the experimental period, the State will continue to estimate hunter activity and harvest for all areas, including those areas where seasons do not extend beyond September 15, and report these to the Service annually until the State begins participating in the Harvest Information Program.

7. All special seasons will be subject to periodic re-evaluation when circumstances or special situations warrant.

B. Regular Seasons

The Service stated in the March 24, 1995, **Federal Register**, that it was reviewing the population status of the Atlantic Population of Canada geese and was conducting an assessment of the past 3 years of harvest reduction to determine whether additional harvest restrictions were necessary. Based on preliminary information from the recently completed spring breeding survey, the Service now believes that further harvest reduction is needed to reverse the downward trend in this population and increase the numbers of breeding pairs. The Service will work cooperatively with the Atlantic Flyway Council to modify the existing regulations and develop appropriate new season frameworks.

9. Sandhill Cranes

Council Recommendations: The Pacific Flyway Council recommended following the management plan with

respect to seasons on the Rocky Mountain Population of greater sandhill cranes. Pending final results of the March 1995 survey which should be available in June 1995, harvest guidelines would allow an open season in the States of Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming if the population is above 16,000 cranes; otherwise, there would be no open season. With an open season, there would be no change in frameworks.

14. Woodcock

Council Recommendations: The Atlantic Flyway Council recommended that woodcock season frameworks remain unchanged in the Eastern Region for 1995-96 unless adverse weather substantially depresses the breeding populations as measured by the 1995 Singing Ground Survey. The Council believes that population declines are attributed to habitat loss and degradation rather than due to current harvest levels.

Written Comments: The Pennsylvania Game Commission recommended that the Service and Flyway Councils develop a harvest management strategy for woodcock in which specific population objectives are identified that would require further harvest restrictions. They also are anticipating a more comprehensive analysis of the woodcock harvest when the Service's Harvest Information Program becomes fully operational.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended changes in bag and possession limits for ducks in Alaska. Specifically, the Council requested the following bag and possession limits for the two Alaska framework sets of restrictive and moderate/liberal, respectively: North Zone 8/24 or 10/30, Gulf Coast Zone 6/18 or 8/24, and Southeast, Pribilof/Aleutian, and Kodiak zones 5/15 or 7/21; and canvasback limits 2/4. Sea duck limits of 15/30 would be separate, with seasons to remain closed on spectacled and Steller's eiders.

Service Response: With the exceptions of canvasback, the Service agrees with the Council's recommendation and proposes to increase daily bag limits to 7 ducks in the Southeast, Pribilof/Aleutian, and Kodiak Zones, 8 ducks in the Gulf Coast Zone, and 10 ducks in the North Zone. Increases would be consistent with the moderate and liberal packages proposed under adaptive harvest management this year, and would return Alaska to the basic limits prevailing prior to restrictions initiated in 1988. Duck breeding populations in Alaska-Yukon during 1995 were above the 1955-94 average by 99 percent for mallards, 90 percent for wigeon, 247 percent for green-winged teal, 164 percent for shovelers, and 896 percent for pintails.

Regarding the canvasback bag limit, the Service believes that harvest management of this species in Alaska and in all Flyways should adhere to the harvest strategy that was employed in 1994, which calls for annually assessing several population parameters, including estimated breeding population, habitat conditions, and harvest. Based on current population levels, expected production, and both last year's and this year's projected harvest estimates, the Service believes that a season in all Flyways and Alaska, with a 1-bird daily bag limit, is warranted.

20. Puerto Rico

Written Comments: Puerto Rico recommended that the daily bag limit for ducks be increased from 3 to 4 birds and that the daily bag limit for snipe be increased from 6 to 8 birds. This recommendation was further modified during the Service Regulations Committee meeting when the Puerto Rico representative requested a desire to have Puerto Rico's regulations be consistent with the Atlantic Flyway.

Service Response: The Service agrees with Puerto Rico's request to make duck and snipe daily bag limits consistent with those proposed for the Atlantic Flyway.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore solicits the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634, Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge comments received, but substantive responses to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds'' (FSES 88-14), filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

The Division of Endangered Species is completing a biological opinion on the proposed action. As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. The Service's biological opinions resulting

from consultations under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species (room 432) and the Office of Migratory Bird Management (room 634), Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the **Federal Register** dated March 24, 1995 (60 FR 15642), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis (FRIA), and publication of a summary of the latter. Although a FRIA is no longer required, the economic analysis contained in the FRIA was reviewed and the Service determined that it met the requirements of E.O. 12866. However, the Service is currently preparing a Small Entity Flexibility Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), to further document the significant beneficial economic effect on a substantial number of small entities. This rule was not subject to review by the Office of Management and Budget (OMB) under E.O. 12866.

These proposed regulations contain no information collections subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). However, the Service does utilize information acquired through other various information collections in the formulation of migratory game bird hunting regulations. These information collection requirements have been approved by OMB and assigned clearance numbers 1018-0005, 1018-0006, 1018-0008, 1018-0009, 1018-0010, 1018-0015, 1018-0019, and 1018-0023.

Authorship

The primary author of this proposed rulemaking is Robert J. Blohm, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1994-95 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703-711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—d and e—j).

Dated: July 13, 1995.

Robert P. Davison,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 1995-96 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select for certain migratory game birds between September 1, 1995, and March 10, 1996.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area, Zone, and Unit Descriptions: Geographic descriptions that differ from those published in the August 17, 1994, Federal Register (59 FR 42474) are contained in a later portion of this document.

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

Shooting Hours: One-half hour before sunrise to sunset, except in Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida: An experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, an experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 23, 1995), with daily bag and possession limits being the same as those in effect during the 1995 regular duck season. The remainder of the regular duck season may not begin before October 15.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and must be included in the regular duck season daily bag and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1-15 may be selected

by Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, West Virginia and portions of Pennsylvania and North Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 30 days may be selected by North Carolina during September 1-30, Statewide, except that the season may not exceed 20 days during September 1-20 in the Northeast Hunt Unit. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1-15, may be selected by Illinois, Indiana, Michigan (except in the Upper Peninsula, where the season may not extend beyond September 10, and in Huron, Saginaw and Tuscola Counties, where no special season may be held), Minnesota, Missouri, Ohio, Tennessee, and Wisconsin. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

Experimental Canada goose seasons may be selected by Illinois, Minnesota, and Tennessee. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside Dates: September 1-18 in Illinois; September 1-16 in Minnesota; and September 1-30 in Tennessee.

Season Length: Not to exceed 10 days.

Daily Bag Limits: Not to exceed 5 Canada geese.

Pacific Flyway

General Seasons

Wyoming may select a September season on Canada geese subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.
2. Hunting will be by State permit.
3. No more than 150 permits, in total, may be issued.
4. Each permittee may take no more than 2 Canada geese per season.

Oregon, in the Lower Columbia River Zone, may select a season on Canada geese subject to the following conditions:

1. The season length is 12 days during September 1-12.
2. The daily bag limit is 3 Canada geese.

Experimental Seasons

Oregon, in the Northwest Zone, may select an experimental season on Canada geese subject to the following conditions:

1. The season length is 12 days during September 1-12.
2. Hunting will be by State permit.
3. Each permittee may take no more than 2 Canada geese per day.

Washington may select a season on Canada geese, subject to the following conditions, in the Lower Columbia River Zone:

1. The season length is 12 days during September 1-12.
2. The daily bag limit is 3 Canada geese.

Regular Goose Seasons

Regular goose seasons in Wisconsin and the Upper Peninsula of Michigan may open as early as September 23. Season lengths and bag and possession limits will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils. All hunts except those in Arizona, New Mexico, Utah, and Wyoming will be experimental.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into two segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into two segments.

Daily Bag Limits:

Clapper and King Rails - In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails - In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1 and January 31. States in the Central and Mississippi Flyways may select hunting seasons between September 1 and January 31.

Hunting Seasons and Daily Bag Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with a daily bag limit of 3; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with a daily bag limit of 5. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 35 days.

Band-tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Permit Requirement: The appropriate State agency must issue permits, and report on harvest and hunter participation to the Service by June 1 of the following year, or participate in the Migratory Bird Harvest Information Program.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 7.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Permit Requirement: The appropriate State agency must issue permits, and report on harvest and hunter participation to the Service by June 1 of the following year, or participate in the Migratory Bird Harvest Information Program.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit (All States east of the Mississippi River, and Louisiana)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons and Daily Bag Limits: Idaho, Nevada, Oregon, Utah, and Washington - Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California - Not more than 60 days which may be split between two periods, September 1-15 and November 1-January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-winged and White-tipped Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which not more than 6 may be white-winged doves and not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days

for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged,mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession limits:

Ducks - Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese - A basic daily bag limit of 6, of which not more than 4 may be greater white-fronted or Canada geese, singly or in the aggregate of these species, except that the daily bag limit on Canada geese in Game Management Units 9E and 18 is 1.

Brant - A daily bag limit of 2.

Common snipe - A daily bag limit of 8.

Sandhill cranes - A daily bag limit of 3.

Tundra swans - Open seasons for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued in GMU 22, authorizing each permittee to take 1 tundra swan per season.

2. No more than 500 permits may be issued during the experimental season in GMU 18. No more than 1 tundra swan may be taken per permit.

3. The seasons must be concurrent with other migratory bird seasons.

4. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1 of the following year.

Hawaii

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days (70 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks - Same as those proposed for the Atlantic Flyway.

Common moorhens - Not to exceed 6.

Common snipe - Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Same as the limit proposed for the Atlantic Flyway.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Central Flyway portion of the following States consists of:

Colorado: That area lying east of the Continental Divide.

Montana: That area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

New Mexico: That area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Wyoming: That area lying east of the Continental Divide.

The remaining portions of these States are in the Pacific Flyway.

Mourning and White-winged Doves

Alabama

South Zone - Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone - Remainder of the State.

California

White-winged Dove Open Areas - Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone - The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone - Remainder of State.

Georgia

Northern Zone - That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of the Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence west along the southern border of Candler County to the Ohoopee River; thence north along the western border of Candler County to Bulloch County; thence north along the western border of Bulloch County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone - Remainder of the State.

Louisiana

North Zone - That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone - The remainder of the State.

Mississippi

South Zone - The Counties of Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, and Walthall.

North Zone - The remainder of the State.

Nevada

White-winged Dove Open Areas - Clark and Nye Counties.

Texas

North Zone - That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I-10 at Fort Hancock; east along I-10 to I-20; northeast along I-20 to I-30 at Fort Worth; northeast along I-30 to the Texas-Arkansas State line.

South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I-10 to Orange, Texas.

Special White-winged Dove Area in the South Zone - That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions - Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone - That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone - Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone - The remainder of the State.

New Mexico

North Zone - North of a line following U.S. 60 from the Arizona State line east to I-25 at Socorro and then south along I-25 from Socorro to the Texas State line.

South Zone - Remainder of the State.

Washington

Western Washington - The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone - That portion of the State north of NJ 70.

South Zone - The remainder of the State.

Special September Goose Seasons

Atlantic Flyway

North Carolina

Northeast Hunt Unit - Counties of Bertie, Camden, Chovan, Currituck, Dare, Hyde, Pamlico, Pasquotank, Perquimans, Tyrrell, and Washington.

Mississippi Flyway (Experimental Seasons)

Illinois

Northeast Zone - Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

Minnesota

Twin Cities Metro Zone - All of Hennepin and Ramsey Counties.

In Anoka County; the municipalities of Andover, Anoka, Blaine, Centerville, Circle Pines, Columbia Heights, Coon Rapids, Fridley, Hilltop, Lexington, Lino Lakes, Ramsey, and Spring Lake Park; that portion of Columbus Township lying south of County State Aid Highway (CSAH) 18; and all of the municipality of Ham Lake except that portion described as follows:

Beginning at the intersection of CSAH 18 and U.S. Highway 65, then east along CSAH 18 to the eastern boundary of Ham Lake, north along the eastern boundary of Ham Lake to the north boundary of Ham Lake, west along the north boundary of Ham Lake to U.S. 65, and south along U.S. 65 to the point of beginning.

In Carver County; the municipalities of Carver, Chanhassen, Chaska, and Victoria; the Townships of Chaska and Laketown; and those portions of the municipalities of Cologne, Mayer, Waconia, and Watertown and the Townships of Benton, Dahlgren, Waconia, and Watertown lying north and east of the following described line:

Beginning on U.S. 212 at the southwest corner of the municipality of Chaska, then west along U.S. 212 to

State Trunk Highway (STH) 284, north along STH 284 to CSAH 10, north and west along CSAH 10 to CSAH 30, north and west along CSAH 30 to STH 25, west and north along STH 25 to CSAH 10, north along CSAH 10 to the Carver County line, and east along the Carver County line to the Hennepin County line.

In Dakota County; the municipalities of Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemont, South St. Paul, Sunfish Lake, and West St. Paul; and the Township of Nininger.

In Scott County; the municipalities of Jordan, Prior Lake, Savage and Shakopee; and the Townships of Credit River, Jackson, Louisville, St. Lawrence, Sand Creek, and Spring Lake.

In Washington County; the municipalities of Afton, Bayport, Birchwood, Cottage Grove, Dellwood, Forest Lake, Hastings, Hugo, Lake Elmo, Lakeland, Lakeland Shores, Landfall, Mahtomedi, Marine, Newport, Oakdale, Oak Park Heights, Pine Springs, St. Croix Beach, St. Mary's Point, St. Paul Park, Stillwater, White Bear Lake, Willernie, and Woodbury; the Townships of Baytown, Denmark, Grant, Gray Cloud Island, May, Stillwater, and West Lakeland; that portion of Forest Lake Township lying south of STH 97 and CSAH 2; and those portions of New Scandia Township lying south of STH 97 and a line due east from the intersection of STH 97 and STH 95 to the eastern border of the State.

Fergus Falls/Benson Zone - That area encompassed by a line beginning on State Trunk Highway (STH) 55 at the Minnesota border, then south along the Minnesota border to a point due south of the intersection of STH 7 and County State Aid Highway (CSAH) 7 in Big Stone County, north to the STH 7/CSAH 7 intersection and continuing north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. Highway 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to the Swift County border, east along the south border of Swift County and north along the east border of Swift County to the south border of Pope County, east along the south border of Pope County and north along the east border of Pope County to STH 28, west along STH 28 to CSAH 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the east border of Otter Tail County, north along the east border of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then west along STH 55 to the point of beginning.

Southwest Canada Goose Zone - All of Blue Earth, Cottonwood, Faribault, Jackson, LeSueur, Lincoln, Lyon, Martin, McLeod, Murray, Nicollet, Nobles, Sibley, Waseca, and Watonwan Counties; that portion of Brown County lying south and west of the following described line: beginning at the junction of U.S. Highway 14, and the east of Brown County line; thence west on U.S. Highway 14 to Cobden; thence due west one mile on U.S. Highway 14 and the township road to the Brown County line; thence due west 12 miles along the county line to the west Brown County line; that portion of Renville County east of State Trunk Highway 4 (STH); that portion of Meeker County south of U.S. Highway 12; in Scott County, the Townships of Belle Plaine, Blakeley, and Helena, including the municipalities located therein; and that portion of Carver County lying west, of the following described line: beginning at the northeast corner of San Francisco Township, thence west along the San Francisco Township line to the east boundary of Dahlgren Township, thence north on the Dahlgren Township line to U.S. Highway 212, thence west on U.S. Highway 212 to STH 284, thence north on STH 284 to County State Aid Highway (CSAH) 10, thence north and west on CSAH 10 to CSAH 30, thence north and west on CSAH 30 the STH 25, thence east and north on STH 25 to CSAH 10, thence north on CSAH 10 to the Carver County line.

Tennessee

East Tennessee Zone - That portion of the State east of and including Anderson, Campbell, Hamilton, Rhea, and Roane Counties.

Kentucky/Barkley Lakes Zone - That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area - The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area - That portion of the State west of a line beginning at the Oklahoma border, north on I-35 to Wichita, north on I-135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area - Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area - The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone - Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area - That portion of the State west of I-35.

Texas

Regular-Season Open Area - That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I-35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area - That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area - That portion of the State west of U.S. 281.

Montana

Regular-Season Open Area - The Central Flyway portion of the State except that area south of I-90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area - Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit - Portions of Fremont County.

Pacific Flyway

Arizona

Special-Season Area - Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area - See State regulations.

Utah

Special-Season Area - Rich and Cache Counties.

Wyoming

Bear River Area - That portion of Lincoln County described in State regulations.

Salt River Area - That portion of Lincoln County described in State regulations.

Eden-Farson Area - Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone - State Game Management Units 11-13 and 17-26.

Gulf Coast Zone - State Game Management Units 5-7, 9, 14-16, and 10 - Unimak Island only.

Southeast Zone - State Game Management Units 1-4.

Pribilof and Aleutian Islands Zone - State Game Management Unit 10 - except Unimak Island.

Kodiak Zone - State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area - The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area - All of the municipality of Culebra.

Desecheo Island Closure Area - All of Desecheo Island.

Mona Island Closure Area - All of Mona Island.

El Verde Closure Area - Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas - All of Cidra Municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of beginning.

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Federal Register

Friday
July 21, 1995

Part V

Department of Education

Office of Postsecondary Education; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

AGENCY: Department of Education.

ACTION: Notice of the results of the first meeting of the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee for the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Federal Perkins Loan (Perkins) Program regulations and notice of cancellation of all future scheduled meetings; Notice of Interpretation.

SUMMARY: This notice reports the results of the April meeting of the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee and cancels all future scheduled meetings. Further, this notice explains the Department of Education's (Department's) interpretation of certain Direct Loan Program regulations relating to borrower defenses, which became effective July 1, 1995. Finally, this notice contains information about administrative procedures the Department will implement regarding borrower defenses.

FOR FURTHER INFORMATION CONTACT: Nicki Meoli, Program Specialist, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, Room 3053, ROB–3, 600 Independence Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 708–9406. 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: On August 18, 1994, the Department published a Notice of Proposed Rulemaking (NPRM) for the Direct Loan Program. (59 FR 42646) That NPRM included a proposed rule that described certain defenses a Direct Loan borrower could raise against repayment of the loan. (§ 685.206(c), 59 FR 42663–42664, August 18, 1994) The preamble to the proposed rule stated that the Secretary intended that the rule would be effective for the 1995–1996 academic year only and that the Secretary would work with interested parties to develop regulations for borrower defenses that would apply to both the Direct Loan and the FFEL Programs. The new rule would be effective beginning with the 1996–1997 academic year. (59 FR 42649, August 18, 1994)

After considering public comments received on the proposed rule, the Secretary decided to issue a final rule for the Direct Loan Program including the rule on borrower defenses that was included in the NPRM. In publishing the final rule for the Direct Loan Program, the Secretary noted that some of the commenters on the NPRM supported the Secretary's announcement that he intended to work with interested parties to develop regulations for borrower defenses that would apply to both the Direct Loan and the FFEL Programs. (59 FR 61664 and 61671, December 1, 1994) These commenters urged the Secretary to structure the discussions under the negotiated rulemaking process and identified particular representatives for the process.

In keeping with his commitment, on April 25, 1995, the Secretary convened the Borrower Defenses Regulations Negotiated Rulemaking Advisory Committee (Committee). The Department retained the services of a professional mediator to serve as a neutral convener and facilitator for the negotiated rulemaking. The Committee represented all affected parties, including representatives of institutions of higher education, higher education organizations, student loan lenders, guaranty agencies, loan servicers, legal aid organizations, students, and the Department. Establishment of the Committee was consistent with the Notice of Intent published by the Department on February 28, 1995. (60 FR 11004)

The ultimate goal of the negotiated rulemaking was to reach consensus among all committee members through discussion and negotiation among all interested and affected parties, including the Department.

The issues the Department presented for negotiation included a determination of which acts or omissions of an institution of higher education a borrower could assert as defenses to a demand for repayment of a loan made under the Direct Loan, FFEL, and Perkins Programs, and the consequences of such defenses for the institution, the Secretary, and, under the FFEL Program, for the lender and the guaranty agency.

The Committee consisted of the following organizations (some organizations with similar interests participated as a coalition):

American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Career College Association
Coalition of Higher Education Assistance Organizations
Coalition of private non-profit multi-State guaranty agencies
Consumer Bankers Association
Education Finance Council
Federation of Associations of Schools of Health Professions
Hispanic Association of Colleges and Universities
Legal Services Team
National Association of College and University Business Officers
National Association of Graduate-Professional Students
National Association of Independent Colleges and Universities
National Association of State Universities and Land Grant Colleges
National Association of Student Financial Aid Administrators
National Association for Equal Opportunity in Higher Education
National Council of Higher Education Loan Programs
Student Loan Marketing Association
United Negro College Fund
U.S. Department of Education
United States Student Association

Committee Recommendation

The Committee was originally scheduled to meet for three sessions during the months of April, May, and June, 1995. However, during the first session, the Department was informed that the non-Federal negotiators had all agreed to recommend to the Department that no changes be made to existing regulations. The non-Federal negotiators thanked the Department for initiating the negotiated rulemaking process that many of them had requested to address the borrower defenses issues. However, they indicated that, after further consideration, they had concluded that they would not recommend further regulatory action on this issue at this time. In particular, the non-Federal negotiators recommended that the Department not pursue an attempt to draft consistent regulatory provisions governing borrower defenses in the Direct Loan, FFEL, and Perkins Programs, and the consequences of such defenses for the institution, the Secretary, and, under the FFEL Program, for the lender and the guaranty agency. Rather, the non-Federal negotiators on the Committee told the Department that they were satisfied that the current regulations adequately address the issue of borrower defenses and that no further regulatory action is needed.

The Secretary has considered carefully the recommendation of the non-Federal negotiators on the Committee and has decided not to make any regulatory changes on the issue of

borrower defenses at this time. The Department is committed to regulating only when absolutely necessary, and then in the most flexible, most equitable, least burdensome way possible. Further, the Department will not regulate if a problem can be solved adequately without regulating. In this instance, the Secretary believes that borrower defenses issues, in particular issues related to the consequences of such defenses, can be adequately addressed by clarifying current regulations and by administrative processes. Therefore, the full Committee has reached consensus that no additional regulations are needed at this time, and this negotiated rulemaking process is concluded. In this notice, the Secretary provides some interpretive and administrative information regarding borrower defenses.

Notice of Meeting Cancellation

Further meetings of the Committee are cancelled.

Clarification of Direct Loan Program Provisions

During consideration of the issues to be discussed at the negotiated rulemaking sessions on borrower defenses, it became apparent to the Department that there was some confusion among negotiators and members of the public regarding the meaning of 34 CFR 685.206(c), which addresses borrower defenses in the Direct Loan Program. In light of that confusion, the Secretary is issuing this interpretation to ensure that program participants and the public generally understand the Secretary's intent in issuing the regulations.

Section 685.206(c) provides that a borrower may assert, in certain specified proceedings, as a defense against repayment of a Direct Loan, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law. In proposing this rule initially, the Secretary stated that the rule was intended to allow a Direct Loan borrower to request that the Secretary ''exercise his long-standing authority to relieve the borrower of his or her obligation to repay a loan on the basis of an act or omission of the borrower's school.'' (59 FR 42649, August 18, 1994) In publishing the final regulations, the Secretary noted that the proposed regulations reflect that an ''act or omission of the school may, under certain circumstances, be a defense against collection of a loan.'' (59 FR 61671, December 1, 1994) The Secretary also noted that the reference to ''applicable State law'' was an acceptable interim standard until common regulations could be developed for the FFEL and Direct Loan Programs. (59 FR 61671, December 1, 1994)

The regulatory reference to acts or omissions of a school that ''would give rise to a cause of action against the school under applicable State law'' has been misunderstood by some members of the public. Some individuals have suggested that any act or omission of a school or its employees that could be the basis for a cause of action by the student against the school could be considered a borrower defense. For example, some participants suggested that a school's negligent failure to wipe up water in the school's hallway that results in an injury to a borrower who slips and falls on that surface could be considered a cause of action that could be a defense against repayment of the loan. The Secretary did not intend for the regulations to include such claims.

The Secretary's statements in the preamble to the proposed rule and the final rule were intended to reflect the limited scope of the regulatory reference to a cause of action under applicable State law that could also be asserted as a defense to collection of a loan. The regulation does not provide a private right of action for a borrower and is not intended to create new Federal rights in this area. The Secretary's view is that claims of defenses by Direct Loan borrowers based on State laws should be recognized by the Department only if the school's act or omission has a clear, direct relationship to the loan.

The Secretary is issuing this interpretation to clarify that his intent in adopting 34 CFR 685.206(c) remains consistent with the statements in the preambles to the proposed and final rules. The Secretary will acknowledge a Direct Loan borrower's cause of action under State law as a defense to repayment of a loan only if the cause of action directly relates to the loan or to the school's provision of educational services for which the loan was provided. The Secretary will not recognize, as a defense against repayment of the loan, a cause of action that is not directly related to the loan or the educational services. In this latter category, the Secretary includes such actions as personal injury tort claims or actions based on allegations of sexual or racial harassment.

The borrower may certainly have a cause of action against the school for actions in these categories, but these actions are generally not related to the receipt or distribution of Direct Loan proceeds and are not a defense to collection of a loan. The Secretary believes that borrowers who believe they have a cause of action based on acts or omissions of the school in these areas should be able to choose to pursue appropriate legal recourse; but that it is not appropriate for the taxpayer to face a potential loss based on actions by schools in matters unrelated to the loan programs themselves.

The Secretary will apply this interpretation of the regulations in determining whether a borrower has a recognizable defense against repayment of a Direct Loan under 34 CFR 682.206(c). The Secretary expects that the adjudication of individual claims will provide further explanation of the Secretary's interpretation of the regulatory requirements.

Administrative Processes To Ensure Similar School Liability for Borrower Defenses in Both the Direct Loan Program and the FFEL Program

Some members of the FFEL industry have asserted that there will be greater liabilities for institutions participating in the Direct Loan Program than for institutions participating in the FFEL Program as a consequence of differences in borrower defenses between the Direct Loan and FFEL Programs. These assertions are inaccurate.

The Department has consistently stated that the potential legal liability resulting from borrower defenses for institutions participating in the Direct Loan Program will not be significantly different from the potential liability for institutions participating in the FFEL Program. (59 FR 61671, December 1, 1994, and Dear Colleague Letter GEN 95–8 January 1995) That potential liability usually results from causes of action allowed to borrowers under various State laws, not from the Higher Education Act or any of its implementing regulations.

Institutions have expressed some concern that there is a potential for greater liability for institutions in the Direct Loan Program than in the FFEL Program under 34 CFR 685.206. The Secretary believes that this concern is based on a misunderstanding of current law and the intention of the Direct Loan regulations.

The Direct Loan regulations are intended to ensure that institutions participating in the FFEL and Direct Loan Programs have a similar potential liability. Since 1992, the FFEL Program regulations have provided that an institution may be liable if a FFEL Program loan is legally unenforceable. (34 CFR 682.609) The Secretary intended to establish a similar standard in the Direct Loan Program by issuing 34 CFR 685.206(c). Consistent with that intent, the Secretary does not plan to

initiate any proceedings against schools in the Direct Loan Program unless an institution participating in the FFEL Program would also face potential liability.

An FFEL Program borrower who alleges that he or she has a defense against repayment of his or her loan because of some action or failure of the borrower's school may present his or her arguments to the guaranty agency or the Department during the collection process. (34 CFR 30.24, 682.410(b)(5)(ii)(C), and 682.410(b)(5)(vi)(I)) If, as part of this process, part or all of the loan is deemed unenforceable, the Department will next consider whether the school should be held liable for the amount of the loan forgiven.

The Direct Loan Program regulations at 34 CFR 685.206 establish a similar process and allow the borrower to assert as a defense against repayment of his or her loan ''any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law.'' If the Department forgives all or part of a loan under this process, it will, in the same manner as it will in the FFEL Program, consider whether the school should be held liable for the amount of the loan forgiven.

Thus, the Secretary will initiate proceedings to establish school liability for borrower defenses in the same manner and based on the same reasons for a school that participates in the Direct Loan Program or the FFEL Program. The school will be entitled to due process in these proceedings, in accordance with the statutory and regulatory provisions addressing them. The Department intends to perform its oversight responsibilities for both loan programs in a manner that provides equitable determinations of institutional liability and promotes sound program administration.

Dated: July 17, 1995.

Richard W. Riley,

Secretary of Education.

[FR Doc. 95–17988 Filed 7–20–95; 8:45 am]

BILLING CODE 4000–01–P

Friday
July 21, 1995

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1 et al.
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–30]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

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

ACTION: Summary presentation of final rules.

SUMMARY: This document serves to introduce the final rules which follow and which comprise Federal Acquisition Circular (FAC) 90–30. The Federal Acquisition Regulatory Council has agreed to issue FAC 90–30 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	Team leader
I	Officials not to benefit	94–802	Rothlein, (703) 697–4349.
II	Procurement integrity	94–804	Rothlein, (703) 697–4349.
III	Whistleblower protection	94–803	Rothlein, (703) 697–4349.
IV	Repeal of requirements for secretarial/agency head determinations regarding use of cost type or incentive contracts.	94–700	Rider, (703) 614–1634.
V	Service contract funding	94–766	Galbraith, (703) 697–6710.

DATES: For effective dates, see individual documents following this one.

FOR FURTHER INFORMATION CONTACT: The team leader whose name appears in relation to each FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–30 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–30 amends the Federal Acquisition Regulation (FAR) as specified below:

Case Summaries

For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Item I—Officials Not to Benefit (Ethics)

(FAR Case 94–802)

Section 6004 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) amended 41 U.S.C. 22 by repealing the requirement for every Government contract or agreement to express the condition that certain officials shall not benefit from the award of that contract or agreement. This final rule deletes the clause at FAR 52.203–1, since there is no longer a statutory requirement to include such a clause in Government contracts. The statements of policy at FAR 3.102 are also deleted. The criminal provisions found at 18 U.S.C. 431 and 432 remain in effect.

Item II—Procurement Integrity (Ethics)

(FAR Case 94–804)

Section 8301(e) of Public Law 103–355 excludes procurements of commercial items from the statutory requirement for contractor employees to certify that they are familiar with the Procurement Integrity Act and that they will report violations of the Act. This final rule amends FAR 3.104–9, 52.203–8, and 52.203–9 to implement Section 8301(e).

Item III—Whistleblower Protections for Contractor Employees (Ethics)

(FAR Case 94–803)

Sections 6005 and 6006 of Public Law 103–355 provide whistleblower protections for contractor employees. This final rule adds a new subpart at FAR 3.9 to implement Sections 6005 and 6006.

Item IV—Repeal of Requirements for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contractors

(FAR Case 94–700)

This rule finalizes the interim rule published as Item I of FAC 90–24. The rule implements Sections 1021, 1071, and 1501 of Public Law 103–355. Sections 1021 and 1071 repealed the statutory requirement for an agency head determination before using a cost type or incentive contract. Section 1501 repealed Section 2301 of Title 10, United States Code. Therefore, the interim rule revised the FAR to delete the determination requirements which are no longer necessary and to delete references to 10 U.S.C. 2301. The final rule also amends FAR 16.306(c)(2) to permit contracting officers to sign determinations and findings that are still required to establish the basis for application of the statutory price or fee limitation in cost-plus-fixed-fee contracts.

Item V—Service Contract Funding

(FAR Case 94–766)

Section 1073 of Public Law 103–355 provides authority for executive branch agencies other than the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration to write service contracts that cross fiscal years, and to fund those contracts with one fiscal year's funds. This final rule amends FAR 32.703–3 and 37.106 to implement Section 1073.

Dated: July 17, 1995.

Capt. Barry L. Cohen, SC, USN,

Project Manager for the Implementation of the Federal Acquisition Streamline Act of 1994.

Federal Acquisition Circular

Number 90–30

Federal Acquisition Circular (FAC) 90–30 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–30 is effective September 19, 1995, except for Item V which is effective August 21, 1995.

Dated: July 13, 1995.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: July 7, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy General Services Administration.

Dated: July 13, 1995.

Thomas S. Luedtke,

Deputy Associate Administrator for Procurement National Aeronautics and Space Administration.

[FR Doc. 95–17933 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 49, and 52

[FAC 90–30; FAR Case 94–802; Item I]

RIN 9000–AG15

Federal Acquisition Regulation; Officials Not to Benefit (Ethics)

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

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) as a result of changes to 41 U.S.C. 22 by Section 6004 of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Julius Rothlein, Ethics Team Leader, at (703) 697–4349 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–30, FAR case 94–802.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

FAR Case 94–802 originated because Section 6004 of Public Law 103–355 amended 41 U.S.C. 22 by repealing the requirement that ''every contract or agreement'' shall express the condition that certain officials shall not benefit from the award of that contract or agreement. The Government has expressed that condition in the form of FAR clause 52.203–1. Since there is no longer a statutory requirement to include such a clause in Government contracts, the clause has been deleted. In addition, in response to a public comment, the statements of policy found at FAR 3.102 through 3.102–2 have been deleted. The criminal provisions found at 18 U.S.C. 431 and 432 remain in effect.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the underlying policy, that certain officials shall not benefit from the award of Government contracts, has not changed.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

Two substantive comments were received from six commenters in response to the proposed rule published in the **Federal Register** on December 1, 1994 (59 FR 61738). The Federal Acquisition Streamlining Act Implementation Team fully considered these comments. The team's analysis and disposition of the comments may be obtained from the FAR Secretariat.

List of Subjects in 48 CFR Parts 3, 49, and 52

Government procurement.

Dated: July 17, 1995.

Capt. Barry L. Cohen, SC, USN,

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

Therefore, 48 CFR Parts 3, 49, and 52 are amended as set forth below:

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for 48 CFR Parts 3, 49, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

3.102 through 3.102–2 [Removed]

2. Section 3.102 is removed and reserved and sections 3.102–1 through 3.102–2 are removed.

PART 49—TERMINATION OF CONTRACTS

49.603–1, 49.603–2, 49.603–3, and 49.603–4 [Amended]

3. Sections 49.603–1(b)(7)(iii), 49.603–2(b)(8)(iii), 49.603–3(b)(7)(iii), and 49.603–4(b)(4)(ii) are amended by revising the phrase ''employment of aliens, and ''officials not to benefit.'' to read ''and employment of aliens.''

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–1 [Reserved]

4. Section 52.203–1 is removed and reserved.

[FR Doc. 95–17934 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[FAC 90–30; FAR Case 94–804; Item II]

RIN 9000–AG17

Federal Acquisition Regulation; Procurement Integrity (Ethics)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council (FAR Council) is implementing Section 8301(e) of the Act by excluding procurement of commercial items from certain certification requirements. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Julius Rothlein, Ethics Team Leader, at (703) 697–4349 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–30, FAR case 94–804.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET). FAR case 94–804 originated because Section 8301(e) excludes procurements of commercial items from the certification requirement of the Procurement Integrity Act which requires that contractor employees certify that they are familiar with the Act, and that they will report violations of the Act.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the elimination of the certification for commercial items will have a beneficial impact on small entities by reducing the paperwork burden. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The final changes do not impose increased record keeping or information collection requirements on members of the public under the Paperwork Reduction Act which would require the approval of OMB under 44 U.S.C. 3501, *et seq.* This final rule reduces paperwork burden by excluding commercial products from certain certification requirements of the Procurement Integrity Act. A correction reflecting the reduction in paperwork burden was approved by OMB on November 30, 1994, under Control No. 9000–0103.

D. Public Comments

Fourteen substantive comments were received from 11 commenters in response to the proposed rule published in the **Federal Register** on December 1, 1994 (59 FR 61740). The Federal Acquisition Streamlining Act Implementation Team fully considered all comments received. The team's analysis and disposition of the comments may be obtained from the FAR Secretariat.

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: July 17, 1995.

Capt. Barry L. Cohen, SC, USN,

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

Therefore, 48 CFR Parts 3 and 52 are amended as set forth below:

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for 48 CFR Parts 3 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

3.104–9 [Amended]

2. Section 3.104–9 is amended in paragraph (b)(1)(iii) by removing the word ''Certify'' and inserting in its place ''Except in the case of a contract for the procurement of commercial items, certify''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.203–8 is amended by revising the date of the provision to read ''(SEPT 1995)''; at the end of the introductory text of paragraph (b) by removing the colon and inserting a period in its place and adding a new sentence to read as follows:

52.203–8 Requirement for Certificate of Procurement Integrity.

* * * * *

REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY (SEPT 1995)

* * * * *

(b) * * * The certification in paragraph (b)(2) of this provision is not required for a procurement of commercial items.

* * * * *

4. Section 52.203–9 is amended by revising the date of the clause to read ''(SEPT 1995)''; at the end of the introductory text of paragraph (c) by removing the colon and inserting a period in its place and adding a new sentence to read as follows:

52.203–9 Requirement for Certificate of Procurement Integrity—Modification.

* * * * *

REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION (SEPT 1995)

* * * * *

(c) * * * The certification in paragraph (c)(2) of this clause is not required for a modification which procures commercial items.

* * * * *

[FR Doc. 95–17935 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 3

[FAC 90–30; FAR Case 94–803; Item III]

RIN 9000–AG16

Federal Acquisition Regulation; Whistleblower Protections for Contractor Employees (Ethics)

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

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 (the Act). The Federal Acquisition Regulatory Council is amending the Federal Acquisition Regulation (FAR) as a result of the enactment of Sections 6005 and 6006 of the Act. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT:

Mr. Julius Rothlein, Ethics Team Leader, at (703) 697–4349 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–30, FAR case 94–803.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

This rule, FAR case 94–803, implements Sections 6005 and 6006 of the Federal Acquisition Streamlining Act, whistleblower protections for contractor employees. These protections are now virtually identical for contractors employed by both DOD and civilian agencies.

A new subpart is being added to FAR Part 3 which states that these protections apply to contractor employees on all Government contracts. In implementing these sections, guidance found at page 222 of (DOD) Conference Report 103–712 was considered which states: ''The conferees direct that the regulations implementing this provision should establish procedures and standards that are as similar as practicable to the procedures and standards already established in Department of Defense regulations.'' However, unlike DOD FAR Supplement (DFARS) subpart 203.71 (which implemented the former, and now repealed 10 U.S.C. 2409a), a clause which must be included in all contracts is not being mandated. It is noted that, unlike 10 U.S.C. 2409a, neither Section 6005 nor 6006 contains any language which mandates the inclusion of a specific clause in contracts to enforce the prohibitions of the law. Enforcement of this law, like so many other laws, is not dependent on the presence of a clause in the contract. Furthermore, by not prescribing a clause for all contracts, the physical size of the contract document can be reduced and thereby further the acquisition streamlining effort.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because during the past four years under 10 U.S.C. 2409a, DOD processed less than 70 cases, half against large contractors. Contractor employee whistleblower actions are not expected to increase significantly as a result of the enactment of Sections 6005 and 6006 of Pub. L. 103–355.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

Forty-one substantive comments were received from 14 commenters in response to the proposed rule published in the **Federal Register** on December 1, 1994 (59 FR 61738). The Federal Acquisition Streamlining Act Implementation Team fully considered all comments received, and the most significant are discussed below. The team's analysis and disposition of the comments may be obtained from the FAR Secretariat.

Comment: A commenter stated that the rule (3.905) raises significant due process concerns as it does not allow the contractor to present or cross-examine witnesses.

Response: Disagree. While it is true that the regulation does not provide for the cross examination of witnesses, administrative due process does not include the right to cross examine witnesses. Administrative due process only provides for notice and the opportunity to be heard. The regulation provides both for notice and the opportunity to be heard by the head of an agency prior to the making of a decision. Comment not accepted.

Comment: A commenter recommended that the rule's reference to ''a substantial'' violation of law be changed to ''any'' violation, thereby, including minor violations of law in the rule's coverage.

Response: Disagree. The Federal Acquisition Streamlining Act specifically states that the disclosure which is the subject of the reprisal must be ''a substantial violation of law.'' Consequently, disclosure of minor violations of law which lead to some reprisal are not covered by Sections 6005 and 6006 of the Act. Comment not accepted.

Comment: Commenters were concerned that 3.904(b) created an unnecessary jurisdictional issue when it indicated that complaints had to be filed within 180 days of discovery of the reprisal.

Response: Agree. Federal Acquisition Streamlining Act does not contain a 180-day filing period. It was proposed to help ensure that the Inspector General (IG) received complaints in a timely fashion so that they could conduct a thorough investigation. The proposed language may have been used to argue that an employee's complaint filed on the 181st day was late and could not be investigated. Again, Sections 6005 and 6006 of the Act do not contain this statute of limitation and the final rule will be changed by deleting 3.904(b) and redesigning 3.904(c) as 3.904(b). Comment accepted.

Comment: A commenter believes that the 30 days provided for the contractor to submit a written response to the IG's report may be too restrictive. Since the statute does not fix a period of time for the contractor's response, the commenter recommended that 3.905(d) provide authority for the IG to set a reasonable period of time for the response appropriate to the nature and complexity of the issues and the facts.

Response: Disagree in part. contractor's written response is made to the head of the agency, not the IG. Agree that there is some need to express how the parties may request an extension of time to file a written response. FAR 3.905(d) will be amended by adding the sentence: ''Extensions of time to file a written response may be granted by the head of the agency or designee.''

Finally, in 3.905 (b), (c), (d), (e) and 3.906 (a), (b) and (c), the words ''or designee'' were added after the reference to the ''head of the agency'' to clarify that the head of the agency may delegate duties under Sections 6005 and 6006.

List of Subjects in 48 CFR Part 3

Government procurement.

Dated: July 17, 1995.

Capt. Barry L. Cohen, SC, USN,

Project manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Part 3 is amended as set forth below:

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for 48 CFR Part 3 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Subpart 3.9, consisting of sections 3.900 through 3.906, is added to read as follows:

Subpart 3.9—Whistleblower Protections for Contractor Employees

3.900 Scope of subpart.

This subpart implements 10 U.S.C. 2409 and 41 U.S.C. 251, *et seq.*, as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

3.901 Definitions.

Authorized official of an agency means an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract.

Authorized official of the Department of Justice means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

Inspector General means an Inspector General appointed under the Inspector General Act of 1978, as amended. In the Department of Defense that is the DOD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

3.902 Applicability.

This subpart applies to all Government contracts.

3.903 Policy.

Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

3.904 Procedures for filing complaints.

(a) Any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.903 may file a complaint with the Inspector General of the agency that awarded the contract.

(b) The complaint shall be signed and shall contain—

(1) The name of the contractor;

(2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(3) The substantial violation of law giving rise to the disclosure;

(4) The nature of the disclosure giving rise to the discriminatory act; and

(5) The specific nature and date of the reprisal.

3.905 Procedures for investigating complaints.

(a) Upon receipt of a complaint, the Inspector General shall conduct an initial inquiry. If the Inspector General determines that the complaint is frivolous or for other reasons does not merit further investigation, the Inspector General shall advise the complainant that no further action on the complaint will be taken.

(b) If the Inspector General determines that the complaint merits further investigation, the Inspector General shall notify the complainant, contractor, and head of the contracting activity. The Inspector General shall conduct an investigation and provide a written report of findings to the head of the agency or designee.

(c) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to—

(1) The complainant and any person acting on the complainant's behalf;

(2) The contractor alleged to have committed the violation; and

(3) The head of the contracting activity.

(d) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.

(e) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.

3.906 Remedies.

(a) If the head of the agency or designee determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the head of the agency or designee may take one or more of the following actions:

(1) Order the contractor to take affirmative action to abate the reprisal.

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(b) Whenever a contractor fails to comply with an order, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(c) Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law, and this subpart, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency or designee. Review shall conform to Chapter 7 of Title 5, United States Code.

[FR Doc. 95–17936 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 11, 16, 19, 36, and 41

[FAC 90–30, FAR Case 94–700; Item IV]

RIN 9000–AG25

Federal Acquisition Regulation; Repeal of Requirements for Secretarial/ Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts

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

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council has agreed to adopt the interim rule published in the **Federal Register** at 59 FR 64784, December 15, 1994, as a final rule and to make additional conforming amendments. This rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to amend the Federal Acquisition Regulation (FAR) to delete the requirement for a ''determination and findings'' before using a cost type or incentive contract and to delete references to 10 U.S.C. 2301. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: September 19, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Contract Award Team Leader, at (703) 614–1634 in reference to this FAR case. For general information, contract the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–30, FAR case 94–700.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act (FASA) of 199, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of FASA implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

The interim rule announced FAR revisions developed under FAR case 94–700, Repeal of Requirements for Secretarial/Agency Head Determinations Regarding Use of Cost Type or Incentive Contracts. Sections 1021 and 1071 repealed the requirement for a determination regarding use of a cost type or incentive contract. Section 1501 repealed Section 2301 of Title 10, United States Code. Therefore, the interim rule revised the FAR to delete the determination requirements which are no longer necessary and to delete references to 10 U.S.C. 2301. The final rule also amends FAR 16.306(c)(2) to permit contracting officers to sign determinations and findings that are still required to establish the basis for application of the statutory price or fee limitation in cost-plus-fixed-fee contracts.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the changes affect only internal Government procedures for processing determinations and findings related to cost type and incentive contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

Six public comments were received in response to the interim rule. These comments were considered in the formulation of this final rule.

List of Subjects in 48 CFR Parts 7, 11, 16, 19, 36, and 41

Government procurement.

Dated: July 17, 1995.

Capt. Barry L. Cohen, SC, USN,

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

Interim Rule Adopted as Final

Accordingly, the interim rule amending 48 CFR parts 7, 11, 16, and 19, which was published at 59 FR 64784 on December 15, 1994, is adopted as a final rule and 48 CFR parts 16, 36, and 41 are amended as follows:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR parts 7, 11, 16, 19, 36, and 41 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 16.306 is amended by revising paragraph (c)(2) to read as follows:

16.306 Cost-plus-fixed-fee Contracts.

* * * * *

(c) * * *

(2) The contracting officer has signed a determination and findings establishing the basis for application of the statutory price or fee limitation (see 15.903(d)).

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS

3. Section 36.606 is amended in paragraph (a) by revising the last sentence to read as follows:

36.606 Negotiations.

(a) * * * Negotiations shall be conducted in accordance with part 15 of this chapter, beginning with the most preferred firm in the final selection (see 15.903(d)(1)(ii) on fee limitation and the determination and findings requirement at 16.306(c)(2) for a cost-plus-fixed-fee contract).

* * * * *

PART 41—ACQUISITION OF UTILITY SERVICES

41.103 [Amended]

4. Section 41.103 is amended in paragraph (a)(2) by removing ''10 U.S.C. 2301, 2304,'' and inserting in its place ''10 U.S.C. 2304''.

[FR Doc. 95-17937 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 37

[FAC 90–30; FAR Case 94–766; Item V]

RIN 9000–AG56

Federal Acquisition Regulation; Service Contract Funding

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

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (the Act) to implement a new authority for funding of service contracts of certain executive branch agencies. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: August 21, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Finance and Payment Team Leader, at (703) 697–6710, in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–30, FAR case 94–766.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994 (the Act), Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

Section 1073 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) provided new authority for executive branch agencies other than the Department of Defense, United States Coast Guard, and National Aeronautics and Space Administration to write service contracts that cross fiscal years, and to fund those contracts with one fiscal year's funds. Consult agency supplements for similar authorities that may exist for the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration. This new authority will allow most agencies to simplify the contracting for, and administration of, service contracts by allowing single, fully funded contract actions, in lieu of multiple contracts or complex obligation arrangements. This new authority significantly simplifies and streamlines the contracting process in this area. To implement this authority, the FAR Council is amending FAR sections 32.703–3 and 37.106.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577 and public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–30, FAR case 94–766), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 32 and 37

Government procurement.

Dated: July 17, 1995.

Capt. Barry L. Cohen, SC, USN,

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

Therefore, 48 CFR Parts 32 and 37 are amended as set forth below:

PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR Parts 32 and 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 32.703–3 is revised to read as follows:

32.703–3 Contracts crossing fiscal years.

(a) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (see 41 U.S.C. 11a, 31 U.S.C. 1308, 42 U.S.C. 2459a and 41 U.S.C. 253*l* (see paragraph (b) of this section)), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (*e.g.*, contracts for expert or consultant services).

(b) 41 U.S.C. 253*l*, as amended by Section 1073 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), authorizes heads of executive agencies other than the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration (41 U.S.C. 252(a)(1)), to enter into a basic contract, options, or orders under that contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the basic contract, options or orders under that contract does not exceed one year each. Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority (see 37.106(b)). Consult agency supplements for similar authorities that may exist for the Department of Defense, United States Coast Guard, or the National Aeronautics and Space Administration.

PART 37—SERVICE CONTRACTING

3. Section 37.106 is revised to read as follows:

37.106 Funding and term of service contracts.

(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law (see paragraph (b) of this section for certain service contracts, 32.703–2 for contracts conditioned upon availability of funds, and 32.703–3 for contracts crossing fiscal years).

(b) 41 U.S.C. 253*l*, as amended by Section 1073 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), authorizes the head of any executive agency except the Department of Defense, United States Coast Guard, and the National Aeronautics and Space Administration (41 U.S.C. 252(a)(1)), to enter into a basic contract, options, or orders under that contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the basic contract, options or orders under that contract does not exceed one year each. Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority (see 32.703–3(b)). Consult agency supplements for similar authorities that may exist for the Department of Defense, United States

Coast Guard, or the National Aeronautics and Space Administration.

[FR Doc. 95–17938 Filed 7–20–95; 8:45 am]

BILLING CODE 6820–EP–M

Friday
July 21, 1995

Part VII

Department of Housing and Urban Development

Office of the Secretary

Operating Cost Adjustment Factors for Low-Income Housing Preservation and Resident Homeownership Projects Assisted With Section 8 Rental Payments; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–3924–N–01]

Notice of Operating Cost Adjustment Factors for Low-Income Housing Preservation and Resident Homeownership Projects Assisted With Section 8 Rental Payments

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: The Low-Income Housing Preservation and Resident Homeownership Act of 1990 (''LIHPRHA'') requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the portion of rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs. This notice announces Operating Cost Adjustment Factors (''OCAF(s)''), to be used for rent increases under LIHPRHA, which are based on a formula using data from the Bureau of Labor Statistics that measure changes in wages and the costs of non-food consumer goods. The most recent published OCAF will be applied on the anniversary date of the housing assistance payments contract. An explanation of the methodology employed to develop the OCAFs is set forth below.

EFFECTIVE DATE: June 1, 1995

FOR FURTHER INFORMATION CONTACT: Barbara Hunter, Acting Director, Planning and Procedures Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–3944; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

OCAFS

The Low-Income Housing Preservation and Resident Homeownership Act of 1990 (''LIHPRHA'') (see, in particular section 222(a)(2)(G) of LIHPRHA 12 U.S.C. 4112(a)(2)(G) and the regulations at 24 C.F.R. 248.145(a)(9)) require that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs. The Secretary has determined to use the OCAF as the annual factor.

Budget-Based Method of Calculating Contract Rent Increases

If an owner believes that the contract rents approved by the Secretary pursuant to the OCAF are not adequate, an owner may request that its contract rent increase be calculated using the budget-based method. Owners shall: (1) Submit documentation to HUD pursuant to the procedures in Chapter 7 of HUD Handbook 4350.1. Insured Project Servicing Handbook, and (2) demonstrate that an increase in contract rents above that provided by the OCAF are necessary to reflect extraordinary necessary expenses of owning and maintaining the Housing. If the Secretary determines that the project rents pursuant to the OCAF are insufficient to cover project operating expenses, the Secretary may increase contract rents in excess of the amount determined pursuant to the OCAF to reflect extraordinary necessary expenses of owning and maintaining the project. Any contract rent increase resulting from using the budget-based method shall be effective for the year approved.

Method for Calculating OCAF

In seeking to find the best operating cost adjustment factors for this purpose, the Department analyzed several sources of data. HUD's own data on rental project operating costs formed the largest and most reliable set of time-series data on actual project expenses. Bureau of Labor Statistics (BLS) data on wages and prices were found to offer the most reliable surrogate data sources.

After exploring alternative approaches, two methods of developing OCAFs were considered for detailed review. One was to use administrative and operating expense data for unsubsidized FHA-insured projects as the basis for developing factors. The other was to use BLS data on wages and prices as a surrogate indicator of operating cost changes.

An analysis of the HUD FHA data from the Form HUD–92410 showed that utility, tax, and insurance expenses had such a high degree of variability that measurements of area- or regional-level average or median expense changes had little relevance to most projects, and that these data could not be used to provide meaningful measures of change. Analysis efforts were therefore concentrated on the ''Administrative'' and ''Operating and Maintenance'' expense items reported on the HUD 92410. It was found that a large percentage of FHA-insured, unassisted projects had unusual changes in year-to-year administrative and operating costs, possibly due to expensing of major repairs using reserve funds that are transferred into the operating expense account. This is of concern, since using operating expense change factors that partly reflect unspecified inclusions of reserve expenditures means that the data do not provide a good indicator of normal, on-going operating expenses or of changes in those expenses. This also appears to explain why change factors developed using FHA-insured administrative and operating expense data do not have a significant central grouping tendency, but instead are spread relatively evenly over a wide range of values. Use of an average or median value has less meaning in such situations than it normally does, since only a few projects have values near the average.

Starting in 1993, HUD began to collect more detailed budget information for all FHA-insured projects, including information on funds transferred from project reserves to cover work reported as operating and maintenance expenses. In future years, this information may make it feasible to develop reliable OCAFs based on costs incurred by unassisted, FHA-insured projects. The Department intends to re-examine the feasibility of this approach as more data become available, but believes that actual operating expense data are not a reliable basis for developing OCAFs at this time and does not intend to use these data to calculate OCAFs.

The second option studied takes advantage of the fact that nearly all administrative and operating expenses are either labor-related or are tied to the cost of non-food producer goods. Labor-related costs should normally tend to move with regional changes in wages, while the cost of most producer goods should change in a similar manner throughout the country. The cost of changes in goods used in administrative and maintenance work can be measured by the BLS Producer Price Index. Wage and employment data are collected on a comprehensive and highly reliable basis by the Bureau of Labor Statistics (BLS). HUD uses BLS wage data in calculating median family income levels, and it uses BLS government wage data as the main determinant of the annual increases for Public Housing Allowed Expense Levels.

Research on Public Housing program administrative and operating expenses has shown that approximately 60 percent of such expenses are labor-related and 40 percent are tied to purchased goods. Since 1983 HUD has used this 60-percent-wage/40-percent-

price-index ratio to update Public Housing Allowed Operating Expenses. The approach has been the subject of research and has been found to work well. It was used to develop OCAF factors that measure changes in ''Administrative'' and ''Operating and Maintenance'' expenses, as follows:

OCAF =(60%*BLS private sector wage change + 40%*BLS non-food PPI change) * (avg. operating and maintenance costs/avg. non-debt service costs)

The FY 1995 OCAF figures, shown on the accompanying appendix, were produced for the metropolitan and nonmetropolitan area parts of each of the ten HUD Regions using the BLS data from the final annual ES–202 series data on employment and wages. This is the same level of geography used for Section 8 Annual Adjustment Factors (AAFs), and has the advantage of capturing regional economic trends while avoiding the sometimes erratic changes that would result from use of more localized data. Future OCAF factors will be released on an annual basis.

Dated: July 17, 1995.

Henry G. Cisneros,

Secretary.

Appendix

LOW INCOME HOUSING PRESERVATION AND RESIDENT HOMEOWNERSHIP ACT OF 1990—FY 1995 OPERATING COST ADJUSTMENT FACTORS

HUD region	Area	Total	Metro	Nonmetro
1	New England	2.3%	2.3%	1.9%
2	New York-New Jersey	3.2%	3.2%	1.6%
3	Mid-Atlantic	2.2%	2.2%	1.9%
4	Southeast	2.3%	2.3%	2.3%
5	Midwest	2.2%	2.3%	1.9%
6	Southwest	2.1%	2.1%	1.6%
7	Great Plains	2.1%	2.2%	2.0%
8	Rocky Mountains	1.9%	2.0%	1.7%
9	Pacific/Hawaii	0.7%	0.8%	1.4%
10	Northwest/Alaska	2.4%	2.6%	1.6%
	U.S. Total	2.0%	2.1%	1.9%

[FR Doc. 95–18052 Filed 7–20–95; 8:45 am]

BILLING CODE 4210–32–P

Friday
July 21, 1995

Part VIII

Federal Communications Commission

47 CFR Parts 20 and 24

Race and Gender Based Provisions for Auctioning C Block Broadband Personal Communications Services Licenses; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 24

[PP Docket No. 93–253, GN Docket No. 90–314, GN Docket No. 93–252, FCC 95–301]

Race and Gender Based Provisions for Auctioning C Block Broadband Personal Communications Services Licenses

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts this *Sixth Report and Order* amending its competitive bidding rules to eliminate race- and gender-based provisions for the auctioning of C block broadband Personal Communications Services licenses. The Commission adopts the rule changes to prevent potential legal delays in conducting the C block auction, while minimizing disruptions to existing business relationships that were formed under the current rules.

EFFECTIVE DATE: July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Brien Ham, (202) 418–0660 (Wireless Telecommunications Bureau), Peter Tenhula, (202) 418–1720 (Office of General Counsel), or Jackie Chorney, (202) 418–0600 (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is the Commission's *Sixth Report and Order* in PP Docket No. 93–253, GN Docket No. 90–314, GN Docket No. 93–252, adopted July 18, 1995 and released July 18, 1995. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M. Street, N.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Sixth Report and Order

Introduction

1. In this *Sixth Report and Order,* we modify our competitive bidding rules for the ''C block'' of Personal Communications Services in the 2 GHz band (broadband PCS) to eliminate race- and gender-based provisions that we believe raise legal uncertainties in the aftermath of the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña,* 115 S.Ct. 2097 (1995). We take this action to accomplish three goals: (1) promotion of rapid delivery of additional competition to the wireless marketplace by C block licensees; (2) reduction of the risk of legal challenge; and (3) minimal disruption to the plans of as many applicants as possible who were in advanced stages of planning to participate in the C block auction when *Adarand* was announced. While taking action to ensure that the auction commences quickly, we also want the maximum number of existing business relationships formed under our prior rules and in anticipation of the C block auction—including those of women and minority applicants—to remain viable. We emphasize that our action today does not indicate that race- and gender-based provisions at issue here could not be sustained without further development of the record. Nor do we believe that such measures generally are inappropriate for future auctions of spectrum-based services. We are considering the means we should take to develop a supplemental record that will support use of such provisions in other spectrum auctions held post-*Adarand.*

Background

2. *Legislation and Commission Action.* In the Omnibus Budget Reconciliation Act of 1993, Congress authorized the competitive bidding of spectrum-based services and mandated that small businesses, rural telephone companies, and businesses owned by members of minority groups and women (collectively known as ''designated entities'') be ensured the opportunity to participate in the provision of such services. In the *Fifth Report and Order,* in PP Docket No. 93–253, we adopted competitive bidding rules designed to encourage designated entity participation in broadband PCS (59 Fed. Reg. 5532). Specifically, we established ''entrepreneurs' blocks'' (the C and F frequency blocks allocated for broadband PCS) for which eligibility is limited to individuals and entities under a certain financial size. We also adopted special provisions for businesses owned by members of minority groups or women and we analyzed their constitutionality utilizing the ''intermediate scrutiny'' standard of review articulated in *Metro Broadcasting, Inc. v. FCC,* 497 U.S. 547, 564–565 (1990). We made subsequent changes to the entrepreneurs' block rules and special provisions for designated entities in the *Fifth MO&O* (59 Fed. Reg. 53,364).

3. *Litigation and Auction Schedule.* On March 15, 1995, in response to a request filed by Telephone Electronic Corp. (TEC) alleging that our broadband PCS competitive bidding rules violated equal protection principles under the Constitution, the U.S. Court of Appeals for the District of Columbia Circuit issued an *Order* stating that ''those portions'' of the Commission's *Order* ''establishing minority and gender preferences, the C block auction employing those preferences, and the application process for that auction shall be stayed pending completion of judicial review.'' As a result, the C block auction, then scheduled to commence 75 days after the March 13, 1995 close of the A and B block auction, was postponed. The court's stay was subsequently lifted on May 1, 1995, pursuant to TEC's motion, after TEC decided to withdraw its appeal. The Commission established August 2, 1995 as the new auction date.

4. On June 12, 1995, three days before initial short form applications (FCC Form 175) for the August 2nd C block auction were due, the Supreme Court decided *Adarand.* The Supreme Court decided to overrule *Metro Broadcasting* ''to the extent that *Metro Broadcasting* is inconsistent with'' *Adarand*'s holding that ''all racial classifications . . . must be analyzed by a reviewing court under strict scrutiny.'' As a result of the *Adarand* decision, the constitutionality of any federal program that makes distinctions on the basis of race must serve a compelling governmental interest and must be narrowly tailored to serve that interest. By Public Notice released June 13, 1995, the Commission postponed the C block auction again in order to give interested bidders and the Commission time to evaluate the impact of *Adarand.* We later established an August 29, 1995 date for the auction.

5. *Further Notice of Proposed Rule Making.* On June 23, 1995, we adopted a *Further Notice of Proposed Rule Making,* in which we identified four race- and gender-based measures in our C block auction rules and two similar provisions in our commercial mobile radio service (CMRS) and broadband PCS rules that were affected by the Court's ruling in *Adarand* (60 Fed. Reg. 34200–34201). In the *Further Notice,* we proposed to eliminate these race- and gender-based provisions and instead modify such measures to be race- and gender-neutral (60 Fed. Reg. 34202–34203). We, at the same time, stated that we remain committed to the mandates and objectives of the Budget Act.

6. In the *Further Notice,* we set forth our specific proposals and our rationale for these C block auction rule changes. While we stressed our commitment to the goal of ensuring broad participation in PCS by designated entities, particularly minority- and women-owned businesses, we indicated that *Adarand* required us to reevaluate our

method for accomplishing this Congressional objective (60 Fed. Reg. 34202). Although we stated in the *Further Notice* that our current record concerning adoption of the race- and gender-based measures contained in our C block auction rules is strong, we tentatively concluded that additional evidence may be necessary to meet the strict scrutiny standard of review required by *Adarand*. We cautioned that development of such a supplemental record would further delay the C block auction, putting the C block winners at a greater competitive disadvantage in the CMRS market vis-a-vis existing wireless carriers such as the A and B block winners, cellular and Specialized Mobile Radio (SMR) carriers (60 Fed. Reg. 34202).

7. Additionally, we indicated that without changes to our race- and gender-based rules, there was a substantial likelihood that the C block auction would be the subject to legal challenge based on the holding in *Adarand*. We stated that a stay would delay both the auctioning and licensing of the C block, and that such a result might harm competition overall in the CMRS marketplace. Also, we recognized that even if the C block auction were not stayed beforehand, there is a high likelihood that minority applicants and possibly female applicants (who utilize bidding credits and other provisions available solely to members of those groups) would be subject to license challenges (*i.e.*, in the form of petitions to deny and judicial appeals). Such challenges could potentially delay their entry into the market and postpone competition.

8. In addition, we recognized that many of the C block applicants have already attracted capital and formed business relationships in anticipation of the C block auction. We observed that these relationships are more likely to survive if the auction is not significantly delayed, and our rule changes are minimally disruptive to existing business plans. We suggested that by eliminating race- and gender-based provisions from our C block auction rules, we would not only reduce the legal uncertainty associated with C block licensing, but we would also further competition and ownership diversity by adopting provisions based on economic size only. By virtue of such rule changes, potential C block bidders, including minority and women bidders, would have a better chance of becoming successful PCS providers. We also indicated that elimination of the race- and gender-based measures from the C block auction rules would be consistent with our duty to implement the Budget Act, since we believe that many designated entities would qualify as small businesses under our rules. Furthermore, as small businesses, such entities would be entitled to a small business bidding credit and favorable installment payment terms.

9. Accordingly, we sought comment on amending six rule provisions as follows:

- Amend Section 24.709 of the Commission's Rules to make the 50.1/49.9 percent ''control group'' equity structure available to all entrepreneurs' block applicants.
- Amend Section 24.720 of the Commission's Rules to eliminate the exception to the affiliation rules that excludes the gross revenues and total assets of affiliates controlled by investors who are members of a minority-owned applicant's control group.
- Amend Section 24.711 of the Commission's Rules to provide for three installment payment plans for entrepreneurs' block applicants that are based solely on financial size.
- Amend Section 24.712 of the Commission's Rules to provide for a 25 percent bidding credit for small businesses.
- Amend Section 24.204 of the Commission's Rules to make the 40 percent cellular attribution threshold applicable to ownership interests held by small businesses and rural telephone companies, and to non-controlling ownership interests held by investors in broadband PCS applicants/licensees that are small businesses.
- Amend Section 20.6 of the Commission's Rules to make the 40 percent attribution threshold for the CMRS ''Spectrum Cap'' applicable to ownership interests held by small businesses and rural telephone companies.

We received 41 timely-filed comments in response to the *Further Notice*. In addition, after announcement of the *Adarand* decision and prior to release of the *Further Notice*, we received 42 informal comments addressing various issues regarding our C block competitive bidding rules, the impact of *Adarand*, and the need for the C block auctions to proceed expeditiously.

Discussion

A. Rationale for Rule Changes

10. The overwhelming majority of commenters support the proposed rule changes set forth in the *Further Notice*. A few commenters, however, generally oppose our proposals on the basis that *Adarand* does not require us to change the race- and gender-based provisions contained in our C block competitive bidding rules. Specifically, BET contends that *Adarand* does not wholly invalidate such provisions but merely requires that their constitutionality be determined utilizing a strict scrutiny standard of review. BET and NABOB argue that the race- and gender-based provisions can and should be retained because they would survive a strict scrutiny standard of review and comply with the congressional mandate of the Budget Act. Similarly, Giles contends that the proposed rule changes contravene the spirit and mandate of the Budget Act. BET also proposes alternative rule changes that it contends will satisfy the Congressional goals outlines in the Budget Act, flow from the Commission's record, and comport with the standards pronounced in *Adarand*.

11. Upon careful review we remain concerned that our present record would not adequately support the race- and gender-based provisions in our C block competitive bidding rules under a strict scrutiny standard of review. Significantly, the D.C. Circuit previously stayed the C block auction in response to a constitutional equal protection challenge against these provisions when a less strict standard of review was applicable. As a result, we strongly believe that there is a substantial likelihood of further legal challenge to the C block auction in the wake of *Adarand* if such provisions remain unchanged. None of the commenters have challenged this belief. Furthermore, as we indicated in the *Further Notice*, we would need additional evidence to sufficiently develop our record to support these race- and gender-based provisions consistent with the dictates of *Adarand* (60 Fed. Reg. 34,200). Any efforts to obtain this additional evidence would require additional time and, therefore, further delay the commencement of the C block auction. The legal uncertainty associated with the race- and gender-based provisions, combined with the views of potential C block bidders that the auction not be subject to any further delay, prompt us to modify our rules in a fashion which would be minimally disruptive to as many of the interested parties, potential bidders as well as members of the financial and investment communities as possible. We also disagree with the assertion by BET and Giles that today's rule changes are inconsistent with the Budget Act. As we concluded in the *Further Notice*, today's rule changes would allow small businesses to benefit from the most

favorable bidding credits and installment payment plans contained in our rules (60 Fed. Reg. 34200). As a result, because we have evidence which supports a conclusion that many designated entities, including minority and women-owned businesses, would qualify as small businesses and, thus, benefit from such provisions, we believe that our action is fully consistent with the Budget Act. We further conclude that the proposals we adopt today are necessary under the circumstances and indeed will best serve the public interest.

12. With respect to alternative rule change proposals presented by the commenters, we conclude, as discussed more fully below, that because they draw distinctions based upon race, most of these proposals would engender the same danger of constitutional infirmity and would result in the same legal uncertainties that we week to mitigate by these decisions. To the extent that the commenters have presented race- and gender-neutral rule changes, we conclude, as discussed herein, that the proposals set forth in the *Further Notice*, which are broadly supported by numerous commenters, constitute the more prudent and expedient course of action for proceeding with the auctioning of the C block licenses post-*Adarand*.

B. Control Group Equity Structures

13. *Background.* Our current rules permit broadband PCS applicants for licenses in the C block to utilize one of two equity ''control group'' structures, so that the gross revenues and total assets of persons or entities holding interests in such applicants will not be considered. These two equity structures are the *Control Group Minimum 25 Percent Equity Option* (which is available to all applicants) and the *Control Group Minimum 50.1 Percent Equity Option* (which is currently available only to minority or women applicants). In the *Further Notice*, we proposed to modify our rules to permit all C block applicants, including small businesses and entrepreneurs, to avail themselves of the *Control Group Minimum 50.1 Percent Equity Option*. When we adopted the *Control Group Minimum 50.1 Percent Equity Option* in the *Fifth R&O*, we determined that making such a mechanism available to minority- or women-owned businesses would better enable them to attract adequate financing (59 Fed. Reg. 5532). We have previously noted that the primary impediment to participation by businesses owned by women and minorities in broadband PCS is a lack of access to capital. We tentatively concluded that such a rule change would cause the least disruption and open up additional financing options for other applicants in the C block auction. The *Further Notice* sought comment on this proposed rule change and tentative conclusion (60 Fed. Reg. 34,200).

14. *Comments.* Most commenters agree that the *Control Group Minimum 50.1 Percent Equity Option* should be made available to all C block applicants. Several commenters express concerns about further delay of the auctioning and licensing of the C block and agree that this minimal rule change would not unduly disrupt existing business relationships. Other commenters support the proposed rule change on the basis that it would substantially reduce, if not eliminate, the possibility of legal challenges to the C block auction based on the *Adarand* decision. DCR Communications and Small Business PCS argue that elimination of minority- and gender-based provisions would provide meaningful opportunity for small businesses, as well as minority- and women-owned businesses, to participate in the C block auction.

15. Other commenters, however, oppose extending availability of the *Control Group Minimum 50.1 Percent Equity Option* to all entrepreneurs. K&M proposes that this equity structure only be available to ''very small businesses,'' defined as businesses with revenues up to $20 million. Omnipoint argues that because the *Control Group Minimum 50.1 Percent Equity Option* was created to address the problems experienced by women- and minority-owned companies in accessing capital, the Commission should either justify the measure under the strict scrutiny standard of review or eliminate is completely. Omnipoint expresses concern that extension of the *Control Group Minimum 50.1 Percent Equity Option* equity structure to all C block applicants would increase the number of ''shams'' financed by big companies. Similarly, Silverman and Century oppose allowing large companies, whether minority- or women-owned, as a general matter, to own more than 25 percent of a C block applicant's equity.

16. *Decision.* We have decided to amend our rules to permit all C block applicants to avail themselves of the *Control Group Minimum 50.1 Percent Equity Option.* This amendment enables minority- or women-owned applicants structured under our prior rule to retain the *Control Group Minimum 50.1 Percent Equity Option,* while extending this option to other applicants in the entrepreneurs' block as well. We recognize that we originally established the *Control Group Minimum 50.1 Percent Equity Option* as a race- and gender-based measure aimed at addressing the unique financing problems experienced by women- and minority-owned businesses. All C block applicants, as well as the public, will be better served if we proceed expeditiously in a manner which both reduces the likelihood of legal challenges and enhances the opportunities for a wide variety of applicants, including designated entities, to obtain licenses and rapidly deploy broadband PCS service. Thus, we conclude that use of this equity structure should now be dependent upon economic size, a factor not implicated by the Court's decision in *Adarand.* Moreover, retaining the *Control Group Minimum 50.1 Percent Equity Option* should help to preserve existing business relationships formed in reliance on our prior rules and encourage participation in the C block auction.

17. We disagree with Omnipoint's position on the *Control Group Minimum 50.1 Percent Equity Option* rule change. In the *Fifth R&O* and the *Fifth MO&O*, we indicated that the equity structure options provided under our rules are designed to provide qualified bidders with a reasonable amount of flexibility in attracting needed financing from other entities, while ensuring that such entities do not acquire controlling interests in the qualified bidders (59 Fed. Reg. 5532, 59 Fed. Reg. 53,364). With respect to the *Control Group Minimum 50.1 Percent Equity Option,* we previously explained that in order to guard against abuses, the control group of applicants choosing this option must own at least 50.1 percent of the applicant's equity, as well as retain control and hold at least 50.1 percent of the voting stock. We have previously concluded that this requirement reduces substantially the danger that a well-capitalized investor with substantial ownership stake will be able to assume *de facto* control of the applicant. In addition, we previously clarified our rules so that persons or entities that are affiliates of one another, or that have an ''identity of interests,'' as well as their other investors pursuant to Sections 24.709(c) and 24.813 will be treated as though they are one person or entity and their ownership interests aggregated for purposes of determining compliance with our nonattributable equity limits. This clarification was aimed at discouraging large investors from circumventing our equity limitations for nonattributable investors. We believe that these measures will be effective in deterring the type of ''sham'' deals

described by Omnipoint. Moreover, we will have the opportunity to review these structures through the application process when bidders who elect to utilize such equity structures are required to identify the members of their control groups. Consequently, we believe that our rules adequately protect against ''sham'' deals.

18. Accordingly, under Section 24.709 of the rules, all applicants in the C block auction selecting a ''control group'' structure in order to exclude the total assets and gross revenues of certain investors will have two options for raising capital through the distribution of equity among ''qualifying investors,'' other eligible investors in the control group (*e.g.*, management and institutional investors) and other non-attributable ''strategic'' investors. In light of the fact that we have eliminated the eligibility dichotomy in the two control group equity options, we specify and clarify here how both options apply to C block applicants.

19. First, we note that under both options the following control and voting requirements continue to apply: (1) the control group must own at least 50.1 percent of the applicant's voting stock, if a corporation, or all of the applicant's general partnership interests, if a partnership; (2) qualifying investors, as defined in the rules, must hold at least 50.1 percent of the voting stock and all general partnership interests within the control group, and must have *de facto* control of the control group and the applicant; and (3) the investor(s) holding ''nonattributable equity'' (up to 25 percent or 49.9 percent) are limited to 25 percent of a corporate applicant's voting equity (including the right to vote such interests through a voting trust or other arrangement) and may hold only limited partnership interests, if the applicant is a partnership.

20. *Control Group Minimum 25 Percent Equity Option.* This equity structure option requires the control group to hold at least 25 percent of the applicant's total equity. Of this 25 percent equity, at least 15 percent must be held by ''qualifying investors.'' A ''qualifying investor'' is generally defined as a member of, or a holder of an interest in a member of, the applicant's or licensee's control group whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets restrictions specified in our rules with regard to eligibility for entrepreneurs' block licenses or status as a small business. With regard to the remaining 10 percent of the control group's equity, this may be held by four types of noncontrolling investors without these investors' assets and revenues being attributed to the applicant, as is the case with other control group members. These are (1) qualifying investors (small businesses or entrepreneurs); (2) individuals who are members of the applicant's management team; (3) existing investors in a preexisting entity that is a member of the control group; and (4) institutional investors. The minimum equity amounts within the control group vary slightly three years after the license is received and for applicants whose sole control group member is a preexisting entity. As for the remaining 75 percent of the applicant's equity (assuming the control group holds no more than the minimum 25 percent), the gross revenues and total assets (and other affiliations) of an investor holding a portion of this remaining equity are not considered so long as such investor (together with its affiliates) holds no more than 25 percent of the applicant's total equity.

21. *Control Group Minimum 50.1 Percent Equity Option.* This equity structure option requires the control group to hold at least 50.1 percent of the applicant's total equity. Of this 50.1 percent equity, at least 30 percent must be held by ''qualifying investors.'' The remaining 20.1 percent of the control group's equity may be held by the same four types of investors specified above. As with the *Control Group Minimum 25 Percent Equity Option*, the minimum equity amounts within the control group vary slightly three years after the license is received and for applicants whose sole control group member is a preexisting entity. As for the remaining non-control group equity, the gross revenues and total assets (and affiliates) of the investor(s) holding this remaining equity is not considered so long as such investor(s) (together with its affiliates) holds no more than 49.9 percent of the applicant's total equity. The reasoning behind these two options and their advantages to applicants for purposes of raising capital are set forth in our *Fifth R&O* and *Fifth MO&O* (59 Fed. Reg. 5532, 59 Fed. Reg. 53,364). We affirm here that this reasoning and the advantages for maintaining both options remain applicable. We note that, under our prior rules, businesses owned by minorities and women had the option to use either equity structure. It is our understanding that such businesses, depending on their particular circumstances, were forming applicants based on the option that best met their needs for outside investment and what the capital markets were seeking from them in the form of equity interests. We now provide both options to all C block applicants and we anticipate that each applicant will pursue (or switch to) the option that best suits its particular capital needs and equity ownership situation.

22. *Qualifying Investors.* The modification in the *Fifth MO&O* and here of the control group minimum equity requirements to allow certain other investors to own ''control group equity''—and not have their assets and revenues attributed to the applicant—may not be clear in light of the definition of ''qualifying investor'' in section 24.702(n) of the Commission's rules. Specifically, in the *Fifth MO&O*, we modified the rules to allow certain noncontrolling investors who do not qualify for the entrepreneurs' block or as a small business to be investors in an applicant's control group (59 Fed. Reg. 53,364). In making these limited changes to the control group equity requirements, we said that this added, but limited, flexibility will (1) promote investment in designated entities generally; (2) attract and promote skilled management for applicants; and (3) encourage involvement by existing firms that have valuable management skills and resources to contribute to the success of applicants.

23. We stated that the first category for inclusion in this 10 percent or 20.1 percent portion of the control group is ''investors in the control group that are women, minorities, small businesses or entrepreneurs.'' The text of the rules adopted in the *Fifth MO&O* and the *erratum* to the *Fifth MO&O* capsulized this category as ''qualifying investors,'' but the definition of ''qualifying investors'' in the rules failed to reflect the broader nature and purpose for allowing ''women, minorities, small businesses or entrepreneurs'' hold shares or options in the 10 percent or 20.1 percent portion of the control group even though they—like the other categories—''if attributed, would cause the applicant to exceed the small business or entrepreneurs' block financial caps * * *.'' (59 Fed. Reg. 53,364) Consistent with our intent in the *Fifth MO&O*, we clarify that, so long as the minimum equity requirements for ''qualifying investors'' (15 percent or 30 percent) under our new rules are met, the remaining control group equity (10 percent or 20.1 percent) may be held by investors that meet either the small business or entrepreneur eligibility requirements. We continue to believe that such entities, if they wish to provide financial support to C block applicants, should not be precluded from doing so because their financial

status would, if considered with other control group members, make the applicant ineligible for the C block or small business status. Accordingly, we clarify our definition of ''qualifying investor'' for purposes of Section 24.709(b) (5)(i)(C) and (6)(i)(C).

C. Affiliation Rules

24. *Background.* We adopted affiliation rules for purposes of identifying all individuals and entities whose gross revenues and assets must be aggregated with those of the applicant in determining whether the applicant exceeds the financial caps for the entrepreneurs' blocks or for small business size status. There are two exceptions to our broadband PCS affiliation rules. Under one exception, applicants affiliated with Indian tribes and Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, are generally exempt from the affiliation rules for purposes of determining eligibility to participate in bidding on C block licenses. These applicants additionally qualify as a small business with a rebuttable presumption that revenues derived from gaming, pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.* will be included in the applicant's eligibility determination. Under the second exception, the gross revenues and assets of affiliates controlled by minority investors who are members of the applicant's control group are not attributed to the applicant for purposes of determining compliance with the eligibility standards for entry into the entrepreneurs' block.

25. In the *Further Notice*, we proposed to eliminate the exception pertaining to minority investors (59 Fed. Reg. 34,204). In crafting this exception, we anticipated that it would permit minority investors that control other business entities to be members of an applicant's control group and to bring their management skills and financial resources to bear in its operation without the assets and revenues of those other concerns being counted as part of the applicant's total assets and revenues. We further anticipated that such an exception would permit minority applicants to pool their resources with other minority-owned businesses and draw on the expertise of those who have faced similar barriers to raising capital in the past. In the *Further Notice*, we tentatively concluded that it would be imprudent to respond to *Adarand* by extending this exception to all entrepreneurs because to do so would frustrate the Commission's goals in establishing the entrepreneurs' block—namely, to ensure that broadband PCS will be disseminated among a wide variety of applicants including small businesses and rural telephone companies (60 Fed. Reg. 34,200).

26. The *Further Notice* proposed to retain the affiliation exception for Indian tribes and Alaska Regional or Village Corporations (60 Fed. Reg. 34,204). We tentatively concluded that the ''Indian Commerce Clause'' of the United States Constitution provides an independent basis for this exception that is not implicated by the *Adarand* decision.

27. *Comments.* The commenters overwhelmingly support elimination of the exception to our affiliation rules that excludes the gross revenues and total assets of affiliates controlled by minority investors who are members of an applicant's control group. Some commenters agree that this rule change would reduce the likelihood of a further delay to the C block auction resulting from legal challenges premised on the *Adarand* decision. Other commenters argue that the Court's ruling in *Adarand* requires elimination of the affiliation rule exception applicable solely to investors who are members of minority groups. With respect to the effect of such rule change, Central Alabama & Mobile Tri-States argue that by virtue of the current rule, well-financed entities who might otherwise not qualify as an entrepreneur or as small businesses are allowed to participate in the C block which is ultimately to the detriment of those C block applicants who actually experience difficulties in accessing capital. DCR Communications contends that the proposed rule change would not deprive women and minority-owned businesses of investment from other minorities whose affiliates would exceed the financial size limitations imposed under our rules; rather, it would limit such investment to 25 percent before it becomes attributable.

28. BET, NABOB, and O.N.E. oppose elimination of the affiliation rule exception pertaining to investors who are members of minority groups. NABOB argues that such elimination will prevent many bidders from including experienced, successful minority entrepreneurs in their control groups, which, in turn, may cause them to lose financing dependent upon such alliances, and, thus, prevent them from participating in the C block auctions. Similarly, BET argues that this rule change would not only exclude several minority entrepreneurs, but, because the A and B blocks already have been licensed, such minorities would be precluded from any meaningful participation in broadband PCS. BET further argues that elimination of the affiliation rule exception would be inconsistent with the congressional mandate given in the Budget Act and the record established by the Commission regarding those problems experienced by minority-owned businesses that the exception was specifically designed to address. Also, BET contends that *Adarand* does not require such a rule change.

29. Some commenters generally propose alternative modifications to the affiliation rule exception for minority investors. NABOB proposes that the exception be modified so that an entity controlled by a member of the control group of a small business applicant or licensee would not be considered an affiliate of the applicant if the entity would qualify as an entrepreneur. Spectrum Resources proposes that investors who have affiliates with gross revenues and total assets sufficiently large to disqualify a small business applicant would still be allowed to invest in the application if their investment was capped at a relatively low level, such as $100,000. Spectrum Resources argues that this modification would increase the pool of investors for small businesses while ensuring that the applicant remains a small business.

30. BET suggests four alternative affiliation rule exceptions. Under BET's first alternative exception, it proposes that the exception be made available only when the revenues and assets of each of the affiliates of minorities in a control group separately qualify as entrepreneurs under our rules. If, however, any of the affiliates exceeded the financial limitations for the C block, then the minority-owned applicant would not be allowed to participate in the C block auction. BET argues that this proposal is analogous to the Commission's treatment of small business consortia in the C Block. Under BET's second proposal, the revenues and assets of affiliates of minority members of an applicant's control group would be excluded if the average revenues of the affiliates over the past two years are less than the C block financial limits. BET argues that without such modification, Native Americans are being singled out for special treatment in violation of the Equal Protection Clause. Under these proposals, BET suggests that aggregation of the gross revenues and total assets of these affiliates would not be required in determining whether the applicant qualifies as an entrepreneur or a small business. BET's other affiliation rule exception proposals consist of making the first two proposals described above

applicable to all members of a control group regardless of race. BET argues that these proposals would exclude large telecommunications companies, allow otherwise excluded minority applicants to participate in the C block auction, and provide for the limited growth of small companies.

31. With regard to the affiliation rule exception pertaining to Native Americans, CIRI, the Oneida Tribe, and Prairie Island agree that such exception should be retained. These commenters also agree that this exception is authorized by the Indian Commerce Clause of the Constitution. Furthermore, CIRI and Prairie Island contend that the affiliation rule exception is not a race-based measure implicated by *Adarand*. Prairie Island argues that the exception is an outgrowth of an accommodation by the federal government of several Indian tribes as sovereign political entities in a trust relationship with the United States. CIRI and Prairie Island also argue that this exception is part of federal Indian law and policy. CIRI also argues that elimination of the affiliation rule exception pertaining to Indian tribes would be: (1) inconsistent with the Small Business Administration's treatment of tribal entities; and (2) without record support since the record supports the exception's underlying purpose and the essential circumstances justifying such exception have not changed.

32. *Decision.* Although we proposed to eliminate the exception to our affiliation rules pertaining to minority-controlled affiliates, we now decide to modify it in a manner similar to BET's proposal. When we originally crafted this exception for minority-owned applicants, we anticipated that it would permit minority investors who control other concerns to be members of a minority-owned applicant's control group and to bring their management skills and financial resources to bear in its operation without the assets and revenues of those other concerns being counted as part of the applicant's total assets and revenues. We further anticipated that such an exception would permit minority-owned applicants to pool their resources with other minority-owned businesses and draw on the expertise of those who have faced similar barriers to raising capital in the past. However, as we recognized in allowing small business consortia to apply in the C block and in granting small businesses special measures, all small businesses, including those owned by minorities and women, should not be precluded from pooling their resources in this capital intensive service. We believe that to some extent, these firms face barriers to raising capital not faced by the larger firms. In addition, small businesses experienced in managing smaller businesses should not be penalized because they own or are otherwise affiliated with other businesses whose assets and revenues must be considered on a cumulative basis and aggregated for purposes of qualifying for the C block auction.

33. Our modification will benefit small business applicants only where the financial position of their affiliates or their qualifying control group member's affiliates, when considered individually and on a cumulative basis, would not present an unfair competitive advantage in the auction. Thus, to achieve the objectives outlined above—including minimizing the adverse impact on existing business relationships, mitigating the risk of legal challenges, and ensuring that the auctions are fair and do not present any bidder with an unfair competitive advantage—we modify this exclusion from affiliation coverage as follows:

- For purposes of the affiliation rules, a small business applicant can exclude from coverage of the affiliation rules any affiliate of the small business applicant if the following conditions are met:

(1) the affiliate would otherwise qualify as an entrepreneur pursuant to section 24.709(a)(1) ($125 million in gross revenues and $500 million in total assets); and

(2) the total assets and gross revenues of all such affiliates, when considered on a cumulative basis and aggregated with each other, do not exceed these amounts.

This exemption will apply for purposes of qualifying for both the C block auction and small business status.

34. We will also retain the affiliation exception for Indian tribes and Alaska Regional or Village Corporations. In the *Fifth MO&O*, we stated that our decision to exempt Indian tribes generally from our affiliation rules was premised on the fact that Congress has imposed unique legal constraints on the way they can utilize their revenues and assets (59 Fed. Reg. 53,364). We recognized that as a result of such constraints imposed by the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 *et seq.*, Native American corporations are precluded from utilizing two important means of raising capital: (1) the ability to pledge the stock of the company against ordinary borrowings, and (2) the ability to issue new stock or debt securities. We further recognized that Congress has mandated that the Small Business Administration determine the size of a business concern owned by a tribe without regard to the concern's affiliation with the Indian tribe and determined that the affiliation exception contained in our C block affiliation rules mirrored this congressional mandate. Although Indian tribes are minorities under our C block auction rules, we conclude that their affiliation rule exception is different from the exception applicable only to minority investors in that it is premised on their unique legal status as recognized in the ''Indian Commerce Clause'' of the United States Constitution.

D. Installment Payments

35. *Background.* Five different installment payment plans are available to C block applicants under Section 24.711 of the Commission's Rules. In the *Further Notice,* we sought comment on our proposal to allow all small businesses, regardless of racial or gender classification, the opportunity to use the most favorable installment payment plan to pay for their licenses (60 Fed. Reg. 34,200). This proposal provides for interest-only payments for six years and payments of principal and interest amortized over the remaining four years of the license term. We indicated that this approach would allow many prospective bidders to maintain their pre-*Adarand* business arrangements.

36. *Comments.* A majority of the comments support the elimination of installment payment plans that are tied to an applicant's status as a minority- or women-owned business, and to provide for three installment payment plans that are based solely on financial size. Several commenters note that our proposal will result in the least amount of delay to the auction and grant of C block licenses. GO Communications asserts that delays and threats of delay to the C block auction will irrevocably damage all entrepreneurs. Airlink expresses a similar opinion when it notes that there is a direct link between auction delays, market competitiveness and investor confidence. Airlink further maintains that auction delays inhibit the ability of applicants to keep and find sources of investment. Small Business PCS was even more adamant that any other alternative would result in further delay and no viable licenses for any small businesses. Although the majority of commenters favor our proposal, Minority Media *et al.* also suggests allowing any applicant who can demonstrate ''good cause'' to request a waiver under Sections 1.3 and 24.819(a) of our rules to be eligible for small business preferences and the bidding credit under our proposed rule. Under Minority Media *et al.*'s proposed alternative, any waiver requests by women and minorities would receive a

''plus'' factor since there is record evidence in this proceeding and in congressional legislation that establishes compelling governmental interests in diversity of ownership.

37. Several commenters oppose our proposal to modify our installment payment plan. InTouch asserts that we are raising barriers to accessing capital by minority-owned businesses. By eliminating the race and gender preference, BET argues that we are not assisting minority-owned small businesses in overcoming obstacles to entry into the PCS marketplace. BET further maintains that the *Further Notice* must still satisfy Congress' directive to disseminate licenses among a wide variety of applicants and to ensure that minorities are not excluded from the auction process. O.N.E. charges that we are wrong to eliminate all race- and gender-based preferences without proposing a race- and gender-neutral solution. Specifically, O.N.E. argues that our proposals do not create a size standard that is race and gender neutral yet small enough to ensure that businesses owned by members of minority groups and women are given the opportunity to participate in the provision of PCS. As a result, they assert that our proposals have the effect of restricting opportunities to only an elite handful of minorities and women.

38. RTC disagrees with our installment plans as set forth in the *Further Notice* and suggests two proposals of its own. First, RTC would make the same installment payment terms available to all small businesses that qualify to participate in the C block auction. Alternatively, RTC would maintain the existing differentials available to small businesses that meet the $40 million gross revenues test vis-a-vis other small businesses that qualify as ''entrepreneurs.'' RTC asserts that the effect of the proposals creates a massive gulf between small businesses whose control groups can meet the $40 million gross revenues test versus those whose control group cannot meet that test.

39. *Decision.* We will amend our rules concerning installment payments as set forth in the *Further Notice* (60 Fed. Reg. 34,200). We have concluded that revision of our installment payment program in this manner, is minimally disruptive to the established business arrangements of the applicants. All small businesses, including minority- or women-owned small businesses, will continue to be eligible for the most favorable installment plan.

40. We further conclude that our installment payment plan designed solely for small businesses will give designated entities an opportunity to participate in the provision of spectrum-based services. By allowing all small businesses to pay for their licenses in this manner (*i.e.,* using installments, at a rate equal to ten-year U.S. Treasury obligations applicable on the date the license is granted and requiring that payments include interest only for the first six years with payments of principal and interest amortized over the remaining four years of the license term), we will provide the most favorable plan to the smallest companies. We are not, as O.N.E. suggests, restricting opportunities to a handful of minorities and women. We are complying with our statutory obligations in a manner that we believe is necessary under the circumstances. We reject RTC's alternatives to make the same installment plan available to all applicants. Our record shows that smaller companies need more assistance accessing capital for broadband licenses and, therefore, the Commission decided these businesses should receive more favorable treatment than the medium to large companies participating in the C block auction.

41. Based on our experience, we conclude that Minority Media *et al.*'s waiver proposal as described in its comments is administratively burdensome, and potentially has its own legal risks since it is based in part on an applicant's status as a woman or minority. A major purpose of our proposals is to avert further delays in the auction and grant of C block licenses. The waivers would give losing applicants a built-in reason to challenge the auction results with petitions to deny if a winning applicant utilized the bidding credit solely as a result of a waiver for ''good cause.'' Therefore, for purposes of the C block auction, we will not adopt such a waiver proposal.

42. Although the revised rules do not specifically target minorities and women, we realize that because a large number of minority- or women-owned businesses are small businesses, our new rules will nonetheless, afford designated entities opportunities to participate in the C block auction. We recognize that this amendment to the installment payment plan will not allow some minority- and women-owned businesses to elect the most favorable installment payment plan because these businesses exceed our small business threshold. We further recognize that these businesses may have to restructure agreements to obtain additional capital to participate in the C block auction.

43. We weighed the risks of litigation to the Commission and to winning bidders, the need to preserve competition, and our commitment to providing service to the public as expeditiously as possible against the additional financial burden this rule change will have on minority- and women-owned businesses that do not qualify as small businesses under our rules. After carefully considering these issues, we determined that the need to mitigate litigation risks, enhance market competition, and encourage prompt service to the public far out-weigh the additional financial burden this rule change would create for potential bidders.

E. Bidding Credits

44. *Background.* Our current rules provide three tiers of bidding credits ranging between 10 percent and 25 percent. Small businesses are eligible for a 10 percent bidding credit. Businesses owned by women or minorities are eligible for a 15 percent bidding credit and small businesses owned by women or minorities are eligible for a 25 percent total bidding credit. The bidding credit acts as a discount on the winning bid amount that a licensee actually pays for the license. In the *Further Notice,* we proposed increasing the bidding credit for small businesses from 10 percent to 25 percent and eliminating the remaining bidding credits (60 Fed. Reg. 34,200). We recognized that this proposal would enhance the competitiveness of all small businesses which will receive a 15 percent increase in their bidding credits. The positions of minority- or women-owned businesses will remain the same because they are already eligible for a 25 percent bidding credit.

45. *Comments.* Commenters generally advocate increasing the small business bidding credit to 25 percent and the elimination of bidding credits based upon an applicant's race or gender. Some commenters supported our proposal to differentiate between applicants on the basis of size in order to avert any *Adarand* or *TEC* legal challenges to our rules. Minority Media *et al.* repeated its ''good cause'' waiver argument under Sections 1.3 and 24.819(a) of our rules.

46. Two commenters oppose the proposed bidding credit modification. Both BET and InTouch argue that race neutral alternatives serve only to reinforce the barriers to capital that many minority-owned businesses face. BET specifically states that the bidding credit is meant to ''address directly the financing obstacles encountered by minorities.'' Two commenters presented alternative proposals for consideration. RTC wants to either (1) make the same bid credits available to all small

businesses that qualify to participate in the C block auction or (2) maintain the existing differentials available to small businesses that meet the $40 million gross revenues test vis-a-vis other small businesses that qualify as ''entrepreneurs.'' O.N.E. proposes increasing the bidding credit for small businesses to 40 percent.

47. *Decision.* We amend our rules to provide for a 25 percent small business bidding credit only. Restructuring our biding credits in this manner is consistent with our post-*Adarand* concerns about the C block auction. While small businesses, in general, will benefit with a higher credit (*i.e.,* from 10 to 25 percent), their rule change will allow the Commission and prospective bidders to avoid litigation, allow the auction to proceed as close to its original schedule as possible and permit prospective bidders to maintain previously negotiated business arrangements and financial agreements.

48. We understand BET's and InTouch's concerns, but believe our proposals do not contradict our statutory obligations. Many commenters have noted that the elimination of minority- and gender-based preferences is necessary in light of recent court challenges to race-based statutes if the C block auction is to proceed without significant delay. Specifically, GO Communications comments that our bidding credit proposal strikes an appropriate balance by leveling benefits upward in a manner that mitigates potential harm to all affected parties. Spectrum Resources contends that the proposal is reasonable and viable although a slight negative effect will result because of the additional competition into the bidding process and a diminishing number of successful minority and women bidders. DCR Communications argues that the proposal is the most sensible and is necessary to ensure participation by designated entities in the auction for, and offering of, PCS. We agree that we are striking an appropriate balance between varied interests to retain our statutory mandate to provide opportunities for designated entities.

F. Cellular PCS Cross-Ownership and CMRS Spectrum Aggregation Limit

49. *Background.* Our cellular-PCS cross-ownership rule prohibits entities with attributable interests in cellular licenses from holding more than 10 MHz of PCS spectrum in an overlapping PCS service area. For purposes of this rule, a 20 percent or greater interest in a cellular license is considered to be attributable, except in the case of cellular interests held by designated entities. In the latter case, we permit small businesses, rural telephone companies, and businesses owned by minorities or women to hold up to a 40 percent noncontrolling interest in a cellular licensee without being subject to the cellular-PCS cross-ownership restriction. We also apply a 40 percent cellular attribution threshold to any entity with a non-controlling interest in a PCS license controlled by minorities or women. The same attribution rules apply to our 45 MHz spectrum cap, which restricts any entities from holding interests in more than 45 MHz of broadband PCS, cellular, and SMR spectrum in the same geographic area. Thus, while interests of 20 percent or more in a broadband PCS, cellular, or SMR license are generally attributable for purposes of the spectrum cap, small businesses, rural telephone companies, and businesses owned by minorities or woman are subject to a 40 percent attribution threshold.

50. In the *Further Notice,* we proposed to modify both the cellular-PCS cross-ownership and the PCS/cellular/SMR spectrum cap rule with respect to the C block by eliminating the use of the 40 percent attribution threshold on the basis of race or gender (60 Fed. Reg. 34,200). Thus, in the cellular-PCS context, we proposed to apply the 40 percent attribution threshold only to cellular interests held by small businesses and rural telephone companies, but to apply the 20 percent threshold to all other cellular interests, including those held by minority and women-controlled entities that are not small business or rural telephone companies. We further proposed to eliminate the rule allowing 40 percent cellular attribution for non-controlling investors in minority- or women-controlled PCS applicants or licensees and instead proposed to apply the 40 percent threshold to non-controlling investors in PCS applicants or licensees controlled by small businesses. In this regard, we noted that the extension of the 40 percent threshold to non-controlling investors in small businesses might result in additional investment in small business PCS applicants. Similarly, with respect to the PCS/cellular/SMR spectrum cap, we proposed to use the 40 percent attribution threshold where PCS/cellular/SMR interests are held by small businesses and rural telephone companies, but to use the 20 percent threshold in all other cases. Although we noted that the cellular-PCS and spectrum cap rules applied to more than just the C block, we proposed to change the rules with respect to the C block only.

51. *Comments.* The comments generally support our proposals for modifying the cellular-PCS cross-ownership and CMRS spectrum aggregation limit rules. Most of the comments mirror earlier comments concerning the commenter's desire to avoid delay; to avoid *Adarand* and *TEC* type legal challenges; and to minimize disruption. DCR Communications notes that our proposal will promote investment. Only two commenters object to our proposal. O.N.E. reasserts its argument that we should not eliminate all race- and gender-based preferences without proposing a race- and gender-neutral solution. Radiofone challenges both the 40 percent cellular-PCS cross-ownership rule and our proposed amendment as unlawful and discriminatory.

52. *Decision.* We will amend our cellular PCS cross-ownership and PCS/cellular/SMR spectrum aggregation limit rules with respect to C block as proposed in the *Further Notice* (50 Fed. Reg. 34,200). These changes will help to avoid further delay or legal challenges to the C block auction and are strongly supported by the comments. We reject Radiofone's argument that the cellular-PCS cross-ownership rule should be eliminated. This argument has been fully addressed previously in the PCS docket and is not an issue raised in this proceeding. Specifically, we modify Section 24.204(d)(2)(ii) with respect to the C block to eliminate the provision in the cellular-PCS cross-ownership rule that increases the attribution threshold to 40 percent on the basis of the race or gender of the holder of the ownership interest, but we will continue to apply the 40 percent threshold to cellular interests held by small businesses and rural telephone companies. We also modify Section 24.204(d)(2)(ii) to provide that non-controlling investors in C block PCS applicants or licensees controlled by small businesses may hold up to a 40 percent interest in a cellular licensee without being subject to the cellular-PCS cross-ownership restrictions. Finally, we make the same modification to the attribution provisions in our spectrum cap rule in Section 20.6(d)(2) that we have made to our cellular-PCS rule. Thus, small businesses or rural telephone companies may hold up to a 40 percent interest in broadband PCS, cellular, or SMR licenses without such interests being attributable under the 45 MHz spectrum cap, but minority- and women-controlled interest holders who are not small businesses or rural telephone companies will be subject to the 20

percent attribution rule for purposes of determining C block eligibility under the spectrum cap. To avoid any apparent inconsistency, Section 206(d)(2) will also reflect the modification with respect to non-controlling investors in C block PCS applicants and licensees that are small businesses.

G. Miscellaneous Issues

53. *Information Collection*. With respect to our proposal to continue requesting information on the short-form applications (FCC Form 175) regarding minority- or women-owned status, both Spectrum Resources and Central Alabama & Mobile Tri-States agree that we should continue to collect such information. Central Alabama & Mobile Tri-States believe that collection of the status data will enable the Commission to analyze the applicant pool and auction results to determine if small business provisions alone were sufficient to achieve the participation of all designated entities, including businesses owned by minorities or women. Central Alabama & Mobile Tri-States further state that in the event that such participation is not obtained, then the collected information would be helpful in establishing a record supporting race- and gender-based preferences for future auctions. Similarly, Spectrum Resources believes that such information could prove valuable in supporting the Commission's actions in any ensuing litigation.

54. We agree that continuing to request information on the short-form applications (FCC Form 175) concerning the minority- or women-owned status of applicants will assist us in analyzing the applicant pool and the auction results to determine whether we have accomplished substantial participation by minorities and women through provisions available to small businesses as required by the Budget Act. We conclude that such information will be helpful and probative in two respects: (1) our preparation of a report to Congress on the participation of designated entities in the auctions and in the provision of spectrum-based services; and, (2) our development of a supplemental record should we find that special provisions for small businesses in the C block PCS auctions prove unsuccessful in ensuring participation by businesses owned by members of minority groups and women in broadband PCS. In this connection, we emphasize that those applicants who indicate that they are minority- or women-owned must meet the applicable definitions as set forth in Section 24.720(c) of our rules.

55. *Other.* Several commenters addressed issues regarding the auctioning and licensing of the C block other than the specific rule changes proposed in the *Further Notice* (60 Fed. Reg. 34,200). These issues included the following: (a) scheduled commencement of the C block auction; (b) proposals of special provisions for entrepreneurs with gross revenues between $40 and $75 million; (c) proposals of circumstances under which upfront payments and down payments can earn interest and be withdrawn; (d) definition of small businesses; (e) criteria for determining C block eligibility; (f) the rebuttable presumption concerning Indian gaming revenues; and (g) effect of business growth and development on C block small business status. We have adequately considered these issues previously and we find no basis to revisit them here in this narrowly-focused rule making. Therefore, we will not make the rule changes proposed by commenters pertaining to such issues.

56. On our own motion, however, we clarify the measurement of gross revenues. Section 24.720 (f) specifies that gross revenues shall be measured ''for the relevant number of calendar years preceding January 1, 1994, or if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175).'' For purposes of qualifying for the C block, an entity, together with its affiliates and persons or entities that hold an attributable interest in such entity and their affiliates, must have gross revenues of less than $125 million in each of the last two years. Therefore, such an entity would measure its annual gross revenues for the calendar years 1992 and 1993, or for its two most recently completed fiscal years. For purposes of qualifying as a small business, an entity, together with its affiliates and persons or entities that hold an attributable interest in such entity and their affiliates, must have average annual gross revenues of not more than $40 million for the preceding three years. Therefore, such an entity would calculate its average annual gross revenues for the years 1991, 1992, and 1993, or for its three most recently completed fiscal years.

57. We note that this definition of gross revenues was adopted when the C block applications were to be filed in early 1995, when audited calendar year 1994 financial statements for most firms were not yet available and when it was unlikely that there would be a substantial difference between calendar and fiscal years for accounting purposes. If our rule's distinction between calendar years and fiscal years results in undue hardship due to a company's particular accounting practices, we will entertain waiver requests to use *either* a calendar-year or a fiscal-year measurment of gross revenues to determine compliance with the financial caps. We did not intend to discriminate based upon a company's particular accounting practices. We delegate authority to the Wireless Telecommunications Bureau to decide such waivers on a case-by-case basis and to grant such upon an affirmative showing pursuant to Section 24.419 of the Commission's rules.

IV. Procedural Matters and Ordering Clauses

58. The Final Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act, is set forth in the Appendix.

59. It is ordered that the rule changes specified below are adopted.

60. It is further ordered that the rule changes set forth below will become effective upon publication in the **Federal Register**. Pursuant to 5 U.S.C. § 553(d)(3) we find ''good cause'' exists to have the rule amendments set forth herein take effect immediately upon publication in the **Federal Register**. The C block auction for broadband PCS is scheduled to commence on August 29, 1995, and initial short-form applications are due July 28, 1995. Our revised rules need to be effective prior to receipt of the short-form applications in order to avoid the delays and litigation risks associated with prior rules.

61. It is further ordered that the Wireless Telecommunications Bureau has delegated authority to decide waiver requests pertaining to our C block competitive bidding rules as specified in paragraph 57 of this *Sixth Report and Order.*

62. This action is taken pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Parts 20 and 24 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

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

Authority: Secs. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, and 332, unless otherwise noted.

2. Section 20.6 is amended by revising paragraph (d)(2) to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

* * * * *

(d) * * *

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee shall be attributed, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to at least 40 percent of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee if the ownership interest is held by a small business, a rural telephone company or a business owned by minorities and/or women, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's rules, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a business owned by minorities and/or women. For purposes of broadband PCS licenses for frequency block C, the 40 percent attribution levels shall only apply to interests held by a small business or a rural telephone company and interests held by an entity with a non-controlling equity interest in a licensee or applicant that is a small business.

* * * * *

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.204 is amended by revising paragraph (d)(2)(ii) to read as follows:

* * * * *

§ 24.204 Cellular eligibility.

* * * * *

(d) * * *

(2) * * *

(ii) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee will be attributable, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to 40 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee if the ownership interest is held by a small business, a rural telephone company, or a business owned by minorities and/or women, as these terms are defined in § 24.720, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a business owned by minorities and/or women. For purposes of broadband PCS licenses for frequency block C, the 40 percent attribution levels shall only apply to interests held by a small business or rural telephone company and interests held by an entity with a non-controlling equity interest in a licensee or applicant that is a small business.

* * * * *

3. Section 24.709 is amended by revising the heading and paragraphs (a), (b)(5)(i)(C), (b)(6, (c)(1) introductory text, (c)(2) introductory text, (c)(2)(ii) and (e) to read as follows:

§ 24.709 Eligibility for licenses for frequency Block C.

(a) *General Rule.*

(1) No application is acceptable for filing and no license shall be granted for frequency block C, unless the applicant, together with its *affiliates* and persons or entities that hold interests in the applicant and their *affiliates*, have *gross revenues* of less than $125 million in each of the last two years and *total assets* of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

(2) The *gross revenues* and *total assets* of the applicant (or licensee), and its *affiliates*, and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their *affiliates*, shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency block C under this section.

(3) Any licensee awarded a license pursuant to this section (or pursuant to § 24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased *gross revenues* or increased *total assets* due to *nonattributable equity* investments (i.e., from sources whose *gross revenues* and *total assets* are not considered under paragraph (b) of this section), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered.

(b) * * *

(5) * * *

(i) * * *

(C) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned, either unconditionally or in the form of stock options, by any of the following entities, which may not comply with § 24.720(n)(1):

(*1*) *Institutional Investors;*

(*2*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group;*

(*3*) Individuals that are members of the applicant's (or licensee's) management; or

(*4*) *Qualifying investors*, as specified in § 24.720(n)(4).

(6) *Control Group Minimum 50.1 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(4) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity*, as provided in paragraph (b)(6)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(A) at least 30 percent of the applicant's (or licensee's)total equity must be held by *qualifying investors*, either unconditionally or in the form of options, exercisable at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors*, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(6)(i)(A) of this section, or by any of the following

entities which may not comply with § 24.720(n)(1):

(*1*) *Institutional investors,* either unconditionally or in the form of stock options;

(*2*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group,* either unconditionally or in the form of stock options;

(*3*) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options; or

(*4*) *Qualifying investors,* as specified in 24.720(n)(4).

(D) Following termination of the three-year period specified in paragraph (b)(6)(i) of this section, *qualifying investors* must continue to own at least 20 percent of the applicant's (or licensee's) total equity unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(6)(i)(A) of this section. The restrictions specified in paragraph (b)(6)(i)(C)(*1*) through (*4*) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity,* the 50.1 percent minimum equity requirements set forth in paragraph (b)(6)(i) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors,* and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors,* or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(6)(i) of this section.

* * * * *

(c) * * *

(1) *Short-form Application.* In addition to certifications and disclosures required by Part 1, subpart Q of this Chapter and § 24.813, each applicant for a license for frequency Block C shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

* * * * *

(2) *Long-form Application.* In addition to the requirements in subpart I of this part and other applicable rules (e.g., §§ 24.204(f), 20.6(e) and 20.9(b) of this chapter), each applicant submitting a long-form application for a license(s) for frequency block C shall, in an exhibit to its long-form application:

* * * * *

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency Block C and its eligibility under §§ 24.711, 24.712, 24.714 and 24.720, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

* * * * *

(e) *Definitions.* The terms *affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, existing investor, gross revenues, institutional investor, members of minority groups, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, qualifying investor, small business* and *total assets* used in this section are defined in § 24.720.

4. Section 24.711 is amended by revising the heading and paragraphs (a)(1), (b) introductory text and (b)(3), and removing paragraphs (b)(4) and (b)(5) to read as follows:

§ 24.711 Upfront payments, down payments and installment payments for licenses for frequency Block C.

(a) * * *

(1) Each eligible bidder for licenses on frequency Block C subject to auction shall pay an upfront payment of $0.015 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this chapter and procedures specified by Public Notice.

* * * * *

(b) *Installment Payments.* Each eligible licensee of frequency Block C may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(e) of this chapter and under the following terms:

* * * * *

(3) For an eligible licensee that qualifies as a small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

* * * * *

5. Section 24.712 is amended by revising the heading and paragraph (a) to read as set forth below, removing paragraphs (b) and (c), and redesignating paragraph (d) as paragraph (b):

§ 24.712 Bidding credits for licenses for frequency Block C.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of twenty-five percent to lower the cost of its winning bid.

* * * * *

6. Section 24.713 is removed and reserved.

7. A new Section 24.715 is added to Subpart H to read as follows:

§ 24.715 Eligibility for licenses for frequency Block F.

(a) *General Rule.*

(1) No application is acceptable for filing and no license shall be granted for frequency block F, unless the applicant, together with its *affiliates* and persons or entities that hold interests in the applicant and their *affiliates,* have *gross revenues* of less than $125 million in each of the last two years and *total assets* of less than $500 million at the time the applicant's short-form application (Form 175) is filed.

(2) The *gross revenues and total assets* of the applicant (or licensee), and its *affiliates,* and (except as provided in paragraph (b) of this section) of persons or entities that hold interests in the applicant (or licensee), and their *affiliates,* shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency block F under this section.

(3) Any licensee awarded a license pursuant to this section (or pursuant to § 24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that a licensee's (or other attributable entity's) increased *gross revenues* or increased *total assets* due to *nonattributable equity* investments (i.e., from sources whose *gross revenues,* and *total assets* are not considered under paragraph (b) of this section), debt

financing, revenue from operations or other investments, business development or expanded service shall not be considered.

(b) *Exceptions to General Rule.*

(1) *Small Business Consortia.* Where an applicant (or licensee) is a *consortium of small businesses,* the *gross revenues* and *total assets* of each small business shall not be aggregated.

(2) *Publicly-Traded Corporations.* Where an applicant (or licensee) is a *publicly traded corporation with widely dispersed voting power,* the *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates,* shall not be considered.

(3) *25 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates,* shall not be considered so long as:

(i) Such person or entity, together with its *affiliates,* holds only *nonattributable equity* equaling no more than 25 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(5) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group*; and

(iii) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(5) of this section, and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(4) *49.9 Percent Equity Exception.* The *gross revenues* and *total assets* of a person or entity that holds an interest in the applicant (or licensee), and its *affiliates,* shall not be considered so long as:

(i) Such person or entity, together with its *affiliates,* holds only *nonattributable equity* equaling no more than 49.9 percent of the applicant's (or licensee's) total equity;

(ii) Except as provided in paragraph (b)(6) of this section, such person or entity is not a member of the applicant's (or licensee's) *control group*; and

(iii) The applicant (or licensee) has a *control group* that complies with the minimum equity requirements of paragraph (b)(6) of this section and, if the applicant (or licensee) is a corporation, owns at least 50.1 percent of the applicant's (or licensee's) voting interests, and, if the applicant (or licensee) is a partnership, holds all of its general partnership interests.

(5) *Control Group Minimum 25 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(3) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity,* as provided in paragraph (b)(5)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 25 percent of the applicant's (or licensee's) total equity as follows:

(A) At least 15 percent of the applicant's (or licensee's) total equity must be held by qualifying investors, either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group, and must have *de facto* control of the control group and of the applicant;

(C) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors,* either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(5)(i)(A) of this section, or by any of the following entities, which may not comply with section 24.720(n)(1):

(*1*) *Institutional investors,* either unconditionally or in the form of stock options;

(*2*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group,* either unconditionally or in the form of stock options;

(*3*) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options; or

(*4*) *Qualifying investors,* as specified in § 24.720(n)(4).

(D) Following termination of the three-year period specified in paragraph (b)(5)(i) of this section, *qualifying investors* must continue to own at least 10 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(5)(i)(A) of this section. The restrictions specified in paragraph (b)(5)(i)(C)(*1*) through (4) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity,* the 25 percent minimum equity requirements set forth in paragraph (b)(5)(i) of this section shall apply, except that only 10 percent of the applicant's (or licensee's) total equity must be held by *qualifying investors* and that the remaining 15 percent of the applicant's (or licensee's) total equity may be held by *qualifying investors* or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 15 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(5)(i) of this section.

(6) *Control Group Minimum 50.1 Percent Equity Requirement.* In order to be eligible to exclude *gross revenues* and *total assets* of persons or entities identified in paragraph (b)(4) of this section, an applicant (or licensee) must comply with the following requirements:

(i) Except for an applicant (or licensee) whose sole control group member is a *preexisting entity,* as provided in paragraph (b)(6)(ii) of this section, at the time the applicant's short-form application (Form 175) is filed and until at least three years following the date of initial license grant, the applicant's (or licensee's) *control group* must own at least 50.1 percent of the applicant's (or licensee's) total equity as follows:

(A) At least 30 percent of the applicant's (or licensee's) total equity must be held by *qualifying minority and/or women investors,* either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short-form application (Form 175);

(B) Such *qualifying minority and/or women investors* must hold 50.1 percent of the voting stock and all general partnership interests within the control group and must have *de facto* control of the control group and of the applicant;

(C) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by *qualifying investors,* either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(5)(i)(A) of this section, or by any of the following entities, which may not comply with section 24.720(n)(1):

(*1*) *Institutional investors*, either unconditionally or in the form of stock options;

(*2*) Noncontrolling *existing investors* in any *preexisting entity* that is a member of the *control group*, either unconditionally or in the form of stock options;

(*3*) Individuals that are members of the applicant's (or licensee's) management, either unconditionally or in the form of stock options; or

(*4*) *Qualifying investors*, as specified in § 24.720(n)(4).

(D) Following termination of the three-year period specified in paragraph (b)(6)(i) of this section, *qualifying minority and/or women investors* must continue to own at least 20 percent of the applicant's (or licensee's) total equity, either unconditionally or in the form of stock options subject to the restrictions in paragraph (b)(6)(i)(A) of this section. The restrictions specified in paragraph (b)(6)(i)(C)(*1*) through (*4*) of this section no longer apply to the remaining equity after termination of such three-year period.

(ii) At the election of an applicant (or licensee) whose *control group's* sole member is a *preexisting entity*, the 50.1 percent minimum equity requirements set forth in paragraph (b)(6)(i) of this section shall apply, except that only 20 percent of the applicant's (or licensee's) total equity must be held by *qualifying minority and/or women investors*, and that the remaining 30.1 percent of the applicant's (or licensee's) total equity may be held by *qualifying minority and/or women investors*, or noncontrolling *existing investors* in such *control group* member or individuals that are members of the applicant's (or licensee's) management. These restrictions on the identity of the holder(s) of the remaining 30.1 percent of the licensee's total equity no longer apply after termination of the three-year period specified in paragraph (b)(6)(i) of this section.

(7) *Calculation of Certain Interests.* Except as provided in paragraphs (b)(5) and (b)(6) of this section, ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that such agreements may not be used to appear to terminate or divest ownership interests before they actually do so, in order to comply with the *nonattributable equity* requirements in paragraphs (b)(3)(i) and (b)(4)(i) of this section.

(8) *Aggregation of Affiliate Interests.* Persons or entities that hold interest in an applicant (or licensee) that are *affiliates* of each other or have an identity of interests identified in § 24.720(1), (3) will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the *nonattributable equity* requirements in paragraphs (b)(3)(i) and (b)(4)(i) of this section.

Example 1 for paragraph (b)(8). ABC Corp. is owned by individuals, A, B, and C, each having an equal one-third voting interest in ABC Corp. A and B together, with two-thirds of the stock have the power to control ABC Corp. and have an identity of interest. If A & B invest in DE Corp., a broadband PCS applicant for block C, A and B's separate interests in DE Corp. must be aggregated because A and B are to be treated as one person.

Example 2 for paragraph (b)(8). ABC Corp. has subsidiary BC Corp., of which it holds a controlling 51 percent of the stock. If ABC Corp. and BC Corp., both invest in DE Corp., their separate interests in DE Corp. must be aggregated because ABC Corp. and BC Corp. are affiliates of each other.

(c) *Short-Form and Long-Form Applications: Certifications and Disclosure.*

(1) *Short-form Application. In addition to certifications and disclosures required by Part 1, subpart Q* of this chapter and § 24.813, each applicant for a license for frequency Block F shall certify on its short-form application (Form 175) that it is eligible to bid on and obtain such license(s), and (if applicable) that it is eligible for designated entity status pursuant to this section and § 24.720, and shall append the following information as an exhibit to its Form 175:

(i) For an applicant that is a *publicly traded corporation with widely disbursed voting power:*

(A) A certified statement that such applicant complies with the requirements of the definition of *publicly traded corporation with widely disbursed voting power* set forth in § 24.720(m);

(B) The identity of each *affiliate* of the applicant if not disclosed pursuant to § 24.813; and

(C) The applicant's *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section.

(ii) For all other applicants;

(A) The identity of each member of the applicant's *control group*, regardless of the size of each member's total interest in the applicant, and the percentage and type of interest held;

(B) The citizenship and the gender or minority group classification for each member of the applicant's *control group* if the applicant is claiming status as a *business owned by members of minority groups and/or women;*

(C) The status of each *control group* member that is an *institutional investor*, an *existing investor*, and/or a member of the applicant's management;

(D) The identity of each *affiliate* of the applicant and each *affiliate* of individuals or entities identified pursuant to paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(C) of this section if not disclosed pursuant to § 24.813;

(E) A certification that the applicant's sole *control group* member is a *preexiting entity*, if the applicant makes the election in either paragraph (b)(5)(ii) or (b)(6)(ii) of this section; and

(F) The applicant's *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section.

(iii) for each applicant claiming status as a *small business consortium*, the information specified in paragraph (c)(1)(ii) of this section, for each member of such consortium.

(2) *Long-form Application.* In addition to the requirements in subpart I of this part and other applicable rules (e.g., §§ 24.204(f), 20.6(e) and 20.9(b) of this chapter), each applicant submitting a long-form application for license(s) for frequency Block F shall, in an exhibit to its long-form application:

(i) Disclose separately and in the aggregate the *gross revenues* and *total assets*, computed in accordance with paragraphs (a) and (b) of this section, for each of the following: the applicant; the applicant's *affiliates*, the applicant's *control group* members; the applicant's attributable investors; and affiliates of its attributable investors;

(ii) List and summarize all agreements or other instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility for a license(s) for frequency Block F and its eligibility under §§ 24.711 through 24.270, including the establishment of *de facto* and *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, partnership agreements, management agreements, joint marketing agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written; and

(iii) List and summarize any investor protection agreements and identify specifically any such provisions in those agreements identified pursuant to paragraph (c)(2)(ii) of this section, including rights of first refusal,

supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees.

(3) *Records Maintenance.* All applicants, including those that are winning bidders, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including those documents referenced in paragraphs (c)(2)(ii) and (c)(2)(ii) of this section and any other documents necessary to establish eligibility under this section or under the definitions of *small business and/or business owned by members of minority groups and/or women.* Licensees (and their successors in interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (Form 175), whichever is earlier.

(d) *Audits.*

(1) Applicants and licensees claiming eligibility under this section or §§ 24.711 through 24.720 shall be subject to audits by the Commission, using in-house and contract resources. Selection for audit may be random, or information, or on the basis of other factors.

(2) Consent to such audits is part of the certification included in the short-form application (Form 175). Such consent shall include consent to the audit of the applicant's or licensee's books, documents and other material (including accounting procedures and practices) regardless of form or type, sufficient to confirm that such applicant's or licensee's representations are, and remain, accurate. Such consent shall include inspection at all reasonable times of the facilities, or parts thereof, engaged in providing and transacting business, or keeping records regarding licensed broadband PCS service and shall also include consent to interview of principals, employees, customers and suppliers of the applicant or licensee.

(e) *Definitions.* The terms *affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, existing investor, gross revenues, institutional investor, members of minority groups, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, qualifying investor, qualifying minority and/or woman investor, small business* and *total assets* used in this section are defined in § 24.720.

8. A new Section 24.716 is added to Subpart H to read as follows:

§ 24.716 Upfront payments, down payments, and installment payments for licenses for frequency Block F.

(a) *Upfront Payments and Down Payments.*

(1) Each eligible bidder for licenses on frequency Block F subject to auction shall pay an upfront payment of $0.015 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid pursuant to § 1.2106 of this Chapter and procedures specified by Public Notice.

(2) Each winning bidder shall make a down payment equal to ten percent of its winning bid (less applicable bidding credits); a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its net winning bid within five business days after the auction closes, and the remainder of the down payment (five percent) shall be paid within five business days after the application required by § 24.809(b) is granted.

(b) *Installment Payments.* Each eligible licensee of frequency Block F may pay the remaining 90 percent of the net auction price for the license in installment payments pursuant to § 1.2110(e) of this Chapter and under the following terms:

(1) For an eligible licensee with *gross revenues* exceeding $75 million (calculated in accordance with § 24.715(a)(2) and (b)) in each of the two preceding years (calculated in accordance with 24.720(f)), interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 3.5 percent; payments shall include both principal and interest amortized over the term of the license.

(2) For an eligible licensee with *gross revenues* not exceeding $75 million (calculated in accordance with § 24.715(a)(2) and (b)) in each of the two preceding years, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first year and payments of interest and principal amortized over the remaining nine years of the license term.

(3) For an eligible licensee that qualifies as a Small business or as a consortium of small businesses, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; payments shall include interest only for the first two years and payments of interest and principal amortized over the remaining eight years of the license term.

(4) For an eligible licensee that qualifies as a business owned by members of minority groups and/or women, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first three years and payments of interest and principal amortized over the remaining seven years of the license term.

(5) For an eligible licensee that qualifies as a small business owned by members of minority groups and/or women or as a consortium of small business owned by members of minority groups and/or women, interest shall be imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted; payments shall include interest only for the first six years and payments of interest and principal amortized over the remaining four years of the license term.

(c) *Unjust Enrichment.*

(1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of such change as a condition of approval. A licensee's (or other attributable entity's) increased gross revenues or increased total assets due to nonattributable equity investments (i.e., from sources whose gross revenues and total assets are not considered under § 24.715(b)), debt financing, revenue from operations or other investments, business development or expanded service shall not be considered to result in the licensee losing edigility for installment payments.

(3) If a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan under this section, the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status. A licensee may not

switch its payment plan to a more favorable plan.

9. A new Section 24.717 is added to Subpart H to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a business owned by members of minority groups and/or women may use a bidding credit of fifteen percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as a small business owned by members of minority groups and/or women or a consortium of small business owned by members of minority groups and/or women may use a bidding credit of twenty-five percent to lower the cost of its winning bid.

(d) *Unjust Enrichment.*

(1) If during the term of the initial license grant (*see* § 24.15), a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit as a condition of the approval of such assignment, transfer or other ownership change.

(2) If during the term of the initial license grant (*see* § 24.15), a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

10. Section 24.720 is amended by revising paragraphs (a), (b)(2), (c)(2), (j)(2), (l)(11)(i), (l)(11)(ii), (n)(1), (n)(3) and adding paragraph (n)(4) to read as follows:

§ 24.720 Definitions.

(a) Scope. The definitions in this section apply to §§ 24.709 through 24.717, unless otherwise specified in those sections.

(b) * * *

(2) For purposes of determining whether an entity meets the $40 million average annual gross revenues size standard set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, persons or entities holding interests in the entity and their affiliates shall be considered on a cumulative basis and aggregated, subject to the exceptions set forth §§ 24.709(b) or 24.715(b).

* * * * *

(c) * * *

(2) That complies with the requirements of § 24.715 (b)(3) and (b)(5) or § 24.715 (b)(4) and (b)(6).

* * * * *

(j) * * *

(2) For purposes of assessing compliance with the equity limits in § 24.709 (b)(3)(i) and (b)(4)(i) or § 24.715 (b)(3)(i) and (b)(4)(i), where such interests are not held directly in the applicant, the total equity held by a person or entity shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(l) * * *

(11) * * *

(i) For purposes of §§ 24.709(a)(2), 24.715(a)(2) and paragraphs (b)(2) and (d) of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of § 24.709 (b)(3) and (b)(5) or § 24.709 (b)(4) and (b)(6) or § 24.715 (b)(3) and (b)(5) or § 24.715 (b)(4) and (b)(6), except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of § 24.709(a) or § 24.715(a) and paragraphs (b) and (d) of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

(ii) For the C block, for purposes of § 24.709(a)(2) and paragraph (b)(2) of this section, an affiliate with gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million at the time the applicant's short-form application (Form 175) is filed will not be considered an affiliate of an applicant (or licensee) that qualifies as a small business under § 24.720(b)(2) (small business definition) provided the gross revenues and total assets of all such affiliates, when considered on a cumulative basis and aggregated with each other do not exceed the amounts specified in section 24.709(a)(1) (entrepreneurs' block caps).

* * * * *

(n) * * *

(1) A qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets limits specified in § 24.709(a) or § 24.715(a), or, in the case of an applicant (or licensee) that is a small business, do not exceed the gross revenues limit specified in paragraph (b) of this section.

* * * * *

(3) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b) (5) and (6) or § 24.715(b) (5) and (6), where such equity interests are not held directly in the applicant, interests held by qualifying investors or qualifying minority and/or woman investors shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(4) For purposes of § 24.709 (b)(5)(C) and (b)(6)(C) or § 24.715 (b)(5)(C) and (b)(6)(C), a qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets do not exceed the gross revenues and total assets limits specified in § 24.709(a) or § 24.715(a).

* * * * *

Appendix—Final Regulatory Flexibility Analysis

Note: This appendix will not appear in the Code of Federal Regulations.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *Further Notice of Proposed Rule Making.* Written public comments on the IRFA were requested. The Commission's final regulatory flexibility

analysis for this Sixth Report and Order in GN Docket No. 93–253 is as follows:

A. Need for and Purpose of Rules

1. This rule making proceeding was initiated to secure comment on proposals to eliminate all race- and gender-based provisions in our competitive bidding rules for our C block auction only. The proposals adopted herein are also designed to implement Congress' goal of giving small businesses, rural telephone companies, and businesses owned by members of minority groups and women the opportunity to participate in the provision of spectrum-based services in accordance with 47 U.S.C. 309(j)(4)(D).

B. Issues Raised by the Public in Response to the Initial Analysis

2. No comments were submitted specifically in response to the Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered

3. The *Further Notice of Proposed Rule Making* in this proceeding offered numerous proposals. All significant alternatives have been addressed in the *Sixth Report and Order*. The majority of the commenters supported the major tenets of the proposed changes and some commenters suggested changes to some of the Commission's proposals. The regulatory burdens we have retained for C block applicants, including small entities, are necessary to carry out our duties under the Communications Act of 1934, as amended, and the Omnibus Budget Reconciliation Act of 1993. For example, although we developed race- and gender-neutral rules, we retained the requirement for applicants claiming status as a business owned by members of minority groups and/or women. This requirement will allow the Commission to submit its report to Congress concerning the participation of minorities and women in the provision of spectrum.

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