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Monday
November 27, 1995

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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

[Two Sessions]

WHEN: November 28 at 9:00 am
December 5 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

LONG BEACH, CA

WHEN: December 12, 1995 at 9:00 am

WHERE: Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802

RESERVATIONS: 310–980–3447

SEATTLE, WA

[Two Sessions]

WHEN: December 13, 1995 at 9:00 am and 1:00 pm

WHERE: National Archives—Pacific Northwest Region, Conference Room, 6125 Sand Point Way, NE., Seattle, WA 98115

RESERVATIONS: 206–526–6507

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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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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55 and 59

[Docket No. PY–93–001]

Voluntary and Mandatory Egg and Egg Products Inspection; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to final rule.

SUMMARY: This document corrects the final rule published on September 21, 1995 (60 FR 49166–49171) which amended the voluntary and mandatory egg and egg products inspection regulations.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, Poultry Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456, 202–720–3271.

SUPPLEMENTARY INFORMATION:

Background

As published, the final rule contained changes to the voluntary and mandatory egg and egg products inspection programs authorized by the Agricultural Marketing Act of 1946, as amended, and the Egg Products Inspection Act in response to new technology and current production and processing practices within the egg products industry.

Need for Correction

The final rule that is the subject of this correction inadvertently capitalized the word ''salmonella'' everywhere it appeared in part 59.

Correction of Publication

As published, the final rule contained an error in amendatory language number 13, on page 49168, third column revising § 59.5 which may prove to be misleading and is in need of clarification and new amendatory language number ''13a.'' is added to read as follows.

§ 59.5 [Corrected]

13. Section 59.5 is amended by revising the definition for the term ''Dirty egg'' or ''Dirties'' and by adding alphabetically two new terms to read as follows:

* * * * *

§§ 59.575 and 59.580 [Corrected]

13a. In § 59.575 paragraphs (c) and (d)(6) and in § 59.580, paragraph (b), the word ''salmonellae'' is removed and the word ''Salmonellae'' is added in its place everywhere it appears.

Dated: November 20, 1995.

D. Michael Holbrook,

Director, Poultry Division.

[FR Doc. 95–28772 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 927

[FV95–927–2FIR]

Winter Pears Grown in Oregon, Washington, and California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which reduced the reporting requirements for handlers who have shipped less than 2,500 standard western pear boxes during any two-week reporting period of the shipping season. This action decreases the reporting burden on such handlers while maintaining the information collection necessary for the efficient operation of the program. This rule was recommended by the Winter Pear Control Committee (Committee), the agency responsible for the local administration of the marketing order for winter pears.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5331; or Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Washington, and California, hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears subject to regulation under the order and approximately 1,800 producers of winter pears in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of winter pear handlers and producers may be classified as small entities.

This rule finalizes changes in the reporting requirements prescribed under the winter pear marketing order. The Winter Pear Control Committee (Comittee) meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for winter pears which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The Committee met on June 2, 1995, and unanimously recommended revising § 927.125 of the winter pear marketing order. This section governs the reporting requirements for handlers of winter pears.

Section 927.70 authorizes the Committee, subject to the approval of the Secretary, to request information from handlers necessary to perform its duties under the order. Section 927.125 provides that each handler shall furnish to the Committee, as of every other Friday, a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report'' containing information used by the Committee for the collection of assessments and the development of statistical data.

This rule revises the reporting requirements to allow handlers who have shipped less than 2,500 standard western pear boxes during any two-week period of the shipping season to report less frequently while maintaining the information collection necessary for the efficient operation of the program.

The interim final rule was issued on September 11, 1995, and published in the Federal Register (60 FR 47858, September 15, 1995), with an effective date of September 15, 1995. That rule amended § 927.125(d) of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended October 16, 1995. No comments were received.

Prior to implementation of the interim final rule, handlers were required to submit the ''Handler's Statement of Pear Shipments'' and the ''Handler's Packout Report'' every other Friday regardless of the quantity of pears shipped in the preceding two-week reporting period. Industry members have acknowledged that this can be burdensome for small handlers, who have shipments of less than 2,500 standard western pear boxes, to report every two-weeks.

The Committee also determined that submission of such winter pear shipment data of less than 2,500 standard western pear boxes is not necessary on a biweekly basis for the efficient administration of the program. As an alternative, handlers may, at their option, not report until their accumulated shipments reach 2,500 standard western pear boxes, provided that they submit the following: a ''Handler's Packout Report'' at the end of harvest which includes a preliminary packout estimate; a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report'' after completion of shipments from regular storage (i.e., non-Controlled Atmosphere storage), at mid-season for Controlled Atmosphere storage, and at the completion of shipments. If the preliminary packout estimate varies from the actual shipments, an explanation of the difference will be required with the final shipment report. The two final reports shall be marked ''final report'' and include an explanation of the actual shipments versus the original estimate, if different.

Information collection requirements will continue to be periodically reviewed by the Committee to ensure that they place a minimal burden on handlers required to file the information. Committee procedures will also continue to be reviewed and streamlined to assure efficiency in administering information collections. The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0089.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of winter pears.

After consideration of all relevant material presented, the information and recommendations submitted by the Committee, and other information, it is found that finalizing the interim final rule without change as published in the Federal Register (60 FR 47858, September 15, 1995) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 927 which was published at 60 FR 47858 on September 15, 1995, is adopted as a final rule without change.

Dated: November 20, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–28773 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 965

[Docket No. FV95–965–1FR]

Tomatoes Grown in the Lower Rio Grande Valley in Texas; Termination of Marketing Order 965

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This document terminates the Federal marketing order for tomatoes grown in the Lower Rio Grande Valley in Texas (order) and the rules and regulations issued thereunder. In recent years, this industry has declined significantly in numbers of producers and handlers. Thus, there is no need for the Department of Agriculture to continue operation of the order.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2170, or Fax (202) 720–5698, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone (210) 682–2833, or Fax (210) 682–5942.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of section 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act and § 965.84 of the order.

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

The termination of the order has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 producers, 5 of which are also handlers who would be subject to seasonal handling regulations under the order, but none have been recommended since the early 1970's. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of the remaining South Texas tomato producers and handlers may be classified as small entities.

The order was initially established in March 1959, to help the industry solve its marketing problems and maintain orderly marketing conditions. It was the responsibility of the Texas Valley Tomato Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of tomatoes. The committee endeavored to achieve orderly marketing and improve acceptance of Texas tomatoes through establishment of minimum size and quality requirements. When regulated, fresh tomato shipments consisted only of those grades and sizes desired by consumers, thus, tending to increase returns to producers and handlers.

During the first year the order was in effect, there were 2,488 producers and 61 handlers of South Texas tomatoes. Over the years, commercial production and handling of tomatoes grown in South Texas have declined significantly. As a consequence, handling requirements have not been applied since the early 1970's and there is no indication that the industry will be revived or that regulations will be needed.

In September 1994, the Department conducted interviews with former and remaining industry members to determine whether they expected a revival of South Texas tomato production in the next two years. Industry members did not give any indication that the industry would be revived. Former industry members that were interviewed stated that they did not plan to resume tomato production. They reported that the decline in the industry was caused by a lack of new tomato varieties adaptable to South Texas, which could make it more competitive with Mexico and Florida.

Further, as stated above, there are currently only 10 producers, 5 of which are also handlers. Without an adequate number of producers and handlers, the Department cannot appoint the required committee of members and alternates, or otherwise continue the operation of the order.

The committee holds a certificate of deposit in the amount of $3,868.35, which matures on September 23, 1995, and a savings account that totals $524.08. At the last meeting in 1991, the committee chairperson suggested that any funds exceeding the expense of termination should be donated to an institution that conducts research for agriculture in the Lower Rio Grande Valley in Texas.

On June 26, 1995, the Department published a proposed rule in the Federal Register (60 FR 32922) to terminate the order and invited public comment through July 26, 1995. No comments were received.

Therefore, based on the foregoing, pursuant to section 608c(16)(A) of the Act and § 965.84 of the order, it is found that Marketing Order No. 965, covering tomatoes grown in the Lower Rio Grande Valley in Texas, does not tend to effectuate the declared policy of the Act and is hereby terminated. The Secretary hereby appoints former chairperson of the committee, Heino Brasch of Donna, Texas; and Belinda G. Garza and James B. Wendland, both of the Marketing Order Administration Branch, as trustees to continue in the capacity of concluding and liquidating the affairs of the former committee, until discharged by the Secretary.

Section 608c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was so notified on September 8, 1995.

Based on the foregoing, the Administrator of the AMS has determined that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 965

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

PART 965—TOMATOES GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS [REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, 7 CFR part 965 is removed.

Dated: November 20, 1995.

Shirley R. Watkins,

Acting Assistant Secretary Marketing and Regulatory Programs.

[FR Doc. 95–28771 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 95–055–2]

Change in Disease Status of Germany Because of Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Germany free of swine vesicular disease. As part of this action, we are adding Germany to the list of countries that, although declared free of swine vesicular disease, are subject to restrictions on pork and pork products offered for importation into the United States. There have been no confirmed outbreaks of swine vesicular disease in Germany since 1981. This rule relieves certain restrictions on the importation of pork and pork products into the United States from Germany. However, because Germany shares common land borders with countries affected by swine vesicular disease, imports pork products from countries affected by swine vesicular disease, and is still considered to be affected with hog cholera, the importation into the United States of pork and pork products from Germany will continue to be restricted.

EFFECTIVE DATE: December 12, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Import/Export Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

On August 29, 1995, we published in the Federal Register (60 FR 44785–44786, Docket No. 95–055–1) a proposal to amend the regulations by adding Germany to the list in § 94.12(a) of countries declared free of SVD. We further proposed to add Germany to the list in § 94.13 of countries that have been declared free of SVD, but from which the importation of pork and pork products is restricted. These actions would relieve certain restrictions on the importation of pork and pork products into the United States from Germany.

We solicited comments concerning our proposal for 60 days ending October 30, 1995. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. This rule relieves certain restrictions on the importation of pork and pork products into the United States from Germany. We have determined that approximately 2 weeks are needed to ensure that the Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after publication in the Federal Register.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the regulations in part 94 by adding Germany to the list of countries that have been declared free of SVD. This action relieves certain restrictions on the importation of pork and pork products into the United States from Germany. However, other requirements continue to restrict the importation of live swine and pork and pork products.

Because of the continued presence of hog cholera in Germany, nearly all of the current U.S. restrictions on the importation of pork and pork products remain unchanged. The only area of pork importation that may be affected by this rule is cured and dried pork imports. A lengthy curing and drying period is required at present for pork and pork products originating from countries with SVD (see 9 CFR 94.17). The restriction for hog cholera is much shorter, requiring that the meat be thoroughly cured and fully dried for a period of not less than 90 days so that the product is shelf stable without refrigeration (see 9 CFR 94.9).

A shorter and less costly curing and drying period for pork and pork products may lead to Germany's increased participation in the U.S. market, depending on the competitiveness of the market for imported cured and dried pork and pork products. However, the impact for U.S. importers and consumers is not expected to be significant. In the fiscal year 1993–94, Germany exported 232 tons of prepared or preserved pork to the United States, which amounted to only 0.25 percent of the total quantity imported into the United States. The effect of this rule on U.S. domestic prices or supplies or on U.S. businesses, including small entities, is expected to be negligible.

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

Executive Order 12778

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.12 [Amended]

2. In § 94.12, paragraph (a) is amended by adding ''Germany,'' immediately after ''Finland,''.

§ 94.13 [Amended]

3. In § 94.13, the introductory text, the first sentence is amended by adding ''Germany,'' immediately after ''Denmark,''.

Done in Washington, DC, this 20th day of November 1995.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–28763 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is broadening loan participation authority by removing the requirement that the participation agreement precede the originating loan's disbursement. Deleting this requirement will provide federal credit unions (FCUs) more flexibility to manage liquidity.

EFFECTIVE DATE: January 26, 1996.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The rule proposed by the Board would delete the current requirement that the participation agreement precede any disbursement of the originating loan's proceeds. 60 FR 39273 (August 2, 1995). The proposal required the ''originating lender'' to use the same underwriting standards it uses for loans that are not being sold as participation loans unless there is a participation agreement in place prior to the disbursement of the loan. If a participation agreement is in place prior to disbursement, all of the participating credit unions will have agreed on underwriting standards. The originating lender would reflect those standards either in its loan policies or the participation agreement. Also, the proposal required the purchaser of a participation interest to have a policy in place prior to entering into a participation agreement. Current Section 701.22(b)(2), as well as the proposed rule, allow either the board of directors or the investment committee to execute the participation agreement.

Summary of Comments

The NCUA received 35 comments on the proposed rule: 27 from credit unions; 3 from credit union trade groups; 4 from credit union leagues; and 1 from an attorney. All 35 commenters support deleting the requirement that the loan participation agreement precede the loan disbursement. Some of the recurring reasons given in support were that it will: enable credit unions to increase their loan-to-share ratios if they desire; enable credit unions with high loan-to-share ratio to sell loans and increase service to members by originating more loans; enable small credit unions to better service their members; be used by credit unions as a liquidity management tool; and enable credit unions to help each other.

Comments were requested on two specific issues. The first issue is whether the rule should require that an agreement be in place either prior to the disbursement of the loan if that loan is intended for a participation or prior to the sale if the loan was originally made to hold in portfolio. Five commenters supported a requirement that the participation agreement be executed prior to disbursal of the loan if the loan is intended for participation. However, as one commenter noted, it would be difficult to determine the intent of the lender at the time the loan is made. As the rule requires the originating lender to use the same underwriting standards it uses for its nonparticipation loans, unless it has a participation agreement in place, the Board does not believe the additional requirement is necessary.

Six commenters said that the rule should require a participation agreement to be in place prior to the sale of the loan. This requirement is in the proposed rule and we have adopted it in the final rule. Section 701.22(b)(2) has been modified in the final rule to clarify that the loans must be identified prior to their sale and that the identification need not occur in the master participation agreement but may be in an addendum to the agreement in a format to be determined by the participating credit unions.

The second specific request for comment was whether the final rule should be amended to limit execution of the participation agreement to the board of directors. The current Section 701.22(b)(2), as well as the proposed rule, permit the board of directors to determine whether they or the investment committee will execute a participation agreement. Of the 17 commenters that responded to the issue, all agreed that the authority to execute should not be limited to the board of directors and some suggested expanding the authority to include management. The commenters noted that Section 701.22(b) limits the formulation of a participation policy to the board of directors. Those executing the agreement would be acting within policies established by the board of directors. With these safeguards in place, the Board agrees that the credit union board of directors should have this greater flexibility to delegate execution of the master participation agreement to either the investment committee or senior management.

One commenter suggested that the final rule require ''no less stringent underwriting standards for participation loans than for non-participation loans.'' As stated in the preamble to the proposal, credit unions are expected to ''exercise due diligence before entering into participation agreements * * *.'' 60 FR 39273 (August 2, 1995). The amendments will allow a small credit union which, for example, has liquidity problems and limits on loan amounts, to enter into a participation agreement with a larger credit union which sets unique loan participation underwriting standards. The participation agreement may provide for higher loan amounts because the small credit union is assured that a portion of the loan will be purchased by the larger credit union.

A few commenters asked the Board to consider relaxing current Section 701.22(c)(2) which requires the originating lender to maintain a ten percent interest in the loans it sells. This provision is mandated by Section 107(5)(E) of the Federal Credit Union Act (12 U.S.C. 1757(5)(E)) which the Board may not amend by a regulation.

Final Rule

The final rule adopts with minor modifications the proposed rule published on August 2, 1995. 60 FR 39273.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a potential number of small credit unions (primarily those under $1 million in assets). The NCUA Board has determined and certifies under the authority granted in 5 U.S.C. 605(b) that the final rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the requirement to establish a written participation policy and agreement in connection with loan participations constitutes a collection of information under the Paperwork Reduction Act. The Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB) require that the public be provided an opportunity to comment on information collection requirements, including an agency's estimate of the burden of the collection of information. 60 FR 44978 (August 29, 1995). The requirement to have a participation agreement exists under the current rule. 12 C.F.R. 701.22(b)(2). NCUA estimates that no more than 1000 federal credit unions will seek to implement a loan participation program. It is NCUA's view that the time spent developing a policy and agreement is not a burden created by this regulation but rather is necessary to establish a safe and sound loan participation program. The paperwork burden created by this rule is the requirement that such policy and agreement be put in writing. NCUA estimates that it should take three hours to prepare the participation policy and one hour to put a participation agreement in written form. Therefore, 4000 total burden hours are required to comply with the collection requirement.

The NCUA Board invites comment on: (1) Whether the collection of information is necessary for the proper performance of the functions of NCUA, including whether the information will have practical utility; (2) the accuracy of NCUA's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information. Send comments to Suzanne Beauchesne, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Comments should be postmarked by January 26, 1996.

After 60 days, NCUA will submit the paperwork requirement to OMB for review under the Paperwork Reduction Act and will publish a notice to that effect in the Federal Register. NCUA will also publish a document in the Federal Register once OMB takes action on the submitted request. Until NCUA receives an OMB control number indicating approval of the requirement that participation policies and agreements be put in writing, a credit union is not required to comply with that requirement.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to federal credit unions.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 16, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Pub. L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.22 is amended by revising paragraphs (a)(1), (b)(2), (c)(4) and (d)(1) to read as follows:

§ 701.22 Loan participation.

(a) * * *

(1) *Participation loan* means a loan where one or more eligible organizations participates pursuant to a written agreement with the originating lender.

* * * * *

(b) * * *

(2) a written master participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors, or if the board has so delegated in its policy, the investment committee or senior management official(s) and retained in the Federal credit union's office. The master agreement shall include provisions for identifying, either through a document which is incorporated by reference into the master agreement or directly in the master agreement, the participation loan or loans prior to their sale; and

* * * * *

(c) * * *

(4) Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. Where a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from non-participation loan underwriting standards.

(d) * * *

(1) Participate only in loans it is empowered to grant, having a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement;

* * * * *

[FR Doc. 95–28704 Filed 11–24–95; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 95–ANE–42; Notice No. SC–95–04–NE]

Special Conditions: Allison Engine Company Model 250–C40 Turboshaft Engine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Allison Engine Company (AE) Model 250–C40 turboshaft engine. This engine will have novel or unique engine ratings that are not defined by the applicable airworthiness regulations. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the

airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

EFFECTIVE DATES: December 27, 1995.

FOR FURTHER INFORMATION CONTACT:

Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; (617) 238–7115; Fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1993, Allison Engine Company applied for an amendment to type certificate E1GL to include a new model 250–C40 turboshaft engine. On March 30, 1995, Allison Engine Company applied for 30-Second one engine inoperative (OEI) and 2-Minute OEI ratings for the engine. The AE Model 250–C40 turboshaft engine will be rated at 30-Second OEI, 2-Minute OEI, 30-Minute OEI, Continuous OEI, Takeoff, and Maximum Continuous ratings.

The applicable airworthiness requirements do not contain 30-Second OEI and 2-Minute OEI rating definitions, and do not contain adequate or appropriate safety standards for the type certification of these new and unusual engine ratings.

Type Certification Basis

Under the provisions of section 21.101 of the FAR, Allison Engine Company must show that the AE Model 250–C40 turboshaft engine meets the requirements of the applicable regulations in effect on the date of the application. The applicable regulations for this engine are FAR part 33, effective February 1, 1965, as amended by Amendments 33–1 through 33–4.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the AE Model 250–C40 turboshaft engine because of the new and unique engine ratings. Therefore, the Administrator prescribes special conditions under the provisions of section 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with section 11.49 of the FAR after public notice and opportunity for comment, as required by sections 11.28 and 11.29(b), and become part of the type certification basis in accordance with section 21.101(b)(2).

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. Two commenters from a domestic company and a foreign airworthiness authority provided the Federal Aviation Administration (FAA) with comments to the special conditions, addressing numerous issues. The comments are grouped according to the applicable special condition paragraphs and are discussed below.

Section 33.4 Instructions for Continuous Airworthiness

One commenter states that there is no requirement in the proposed special conditions stating the use of 2-Minute and 30-Second OEI ratings must be followed by mandatory inspections and maintenance actions.The commenter suggests that the proposed addition to section 33.4 be changed by adding a sentence to state those requirements.

The FAA agrees that the requirements for mandatory inspections and maintenance action after the use of 2-Minute and 30-Second OEI ratings need to be addressed in the proposed special conditions. However, it is more appropriate to set such requirements out in section 33.7, Engine Ratings and Operational Limitations, instead of in the instruction for continuous airworthiness section. The rating definition of 2-Minute and 30-Second OEI is thereby modified by adding inspection and maintenance requirements.

Section 33.27 Turbine, Compressor, Fan, and Turbo-Supercharger Rotors

One commenter states that the first sentence of the proposed additional test requirement does not clearly state whether the 2-Minute and 30-Second OEI conditions are intended to be treated the same as other ratings, when complying with all or with only some parts of the current section 33.27 for non-failure mode cases. One commenter states that the 2-Minute and 30-Second OEI rating concept was originally initiated by industry as a means of safety utilizing the reserve power inherent in a turbine engine for a brief controlled period of time during a critical flight phase, OEI emergency situation. The commenter recommends that a 5 percent reduction in the test margin be made for the non-failure mode cases when section 33.27(c)(2) (i), (ii), (iii) or (iv) applies. The commenter argues that this recommendation has been adopted by the Aviation Rulemaking Advisory Committee's Harmonization Working Group (ARAC–HWG) on Rotor Integrity, and therefore, should be included in the proposed special conditions.

The FAA does not agree. The 5 percent reduction in test margin compared to the current requirements for no-failure cases is still in the drafting stage of the ARAC–HWG deliberations, and has yet to be published for public comment. The FAA has determined that the same test and post-test inspection requirements that appeared in the Supplemental Notice of Proposed Rulemaking (SNPRM) No. 89–27A on the subject of OEI ratings for rotorcraft engines, should be applied to these special conditions for 33.27(c)(2) (i), (ii), (iii) or (iv).

One commenter states that the additional test requirements in this section which impose a demonstration at 100 percent of the rotor speed under failure conditions when operating at 2-Minute and 30-Second OEI ratings are not warranted, and believes that the basis for such demonstration at the OEI conditions should be the probability of occurrence of failures that lead to the use of OEI ratings, in combination with the probability of a rotor failure involving the operating engine.

One commenter states that a five-minute test should be conducted at a combination of the maximum 2-Minute OEI or 30-Second OEI operating temperature, and a speed equal to 105 percent of the highest overspeed that would result from a single failure when operating at 2-Minute OEI or 30-Second OEI conditions. The test results from the overspeed demonstration should be acceptable if the rotor having the minimum material properties and the most adverse dimensional tolerances does not burst.

The FAA does not agree with the use of a probability of occurrence in lieu of a test for compliance of section 33.27 requirements, and does not agree that the test should be at a speed equal to 105 percent of the overspeed resulting from a single failure when operating at the 2-Minute and 30-Second OEI ratings. The FAA bases its determination on the potential severity of failure conditions due to disk burst, the probability of occurrence of the failure condition because of the lower utilization rate of these ratings, and the mandatory post flight inspections and maintenance associated with 2-Minute OEI and 30-Second OEI that actually discourage use of those OEI ratings. In considering the lower combined probability of occurrence of failures that involve the use of 2-Minute OEI or 30-Second OEI rating and a failure occurrence in the operating engine, a 5 percent reduction in test speed, that is

required for the traditional OEI ratings of 2½ minutes or longer, is therefore adopted in this special conditions. In addition, these special conditions require an acceptable growth criteria, in addition to no burst of a minimum strength rotor after it has been subjected to the combined effects of maximum operating temperature and 100 percent of the maximum overspeed resulting from the most critical single failure when operating at 2-Minute OEI or 30-Second OEI operating condition. The conditions imposed by the acceptable growth criteria would minimize the potentially hazardous conditions if the rotor has been operating in an engine. Therefore, the additional rotor test requirements for failure conditions in the final special conditions will remain the same as the proposed special conditions. In summary, the requirements for 2-Minute and 30-Second OEI ratings in the final special condition are appropriate standards for rotor integrity in the context of utilizing the inherent overspeed margin in this engine model without compromising safety. The ARAC's HWG may continue to discuss these issues and propose changes to rules of general applicability, as opposed to dealing with this particular engine design.

One commenter asks the meaning of the term ''the structural integrity of the rotor is maintained'' for the post rotor test requirements.

The FAA disagrees that these special conditions should provide a definition of that phrase for general application. For this engine model, however, the rotor should not burst and not develop, through damage or disk growth, a condition that would prevent safe operation of the engine. The ARAC–HWG continues to work on a proposal for a rule of general application for the 30-second and 2-minute OEI ratings, and on guidance material that would help future applicants in meeting the certification requirements for those ratings.

Section 33.29 Instrument Connection

One commenter states that the proposed additional requirements do not match the relevant needs of FAR 29.1305(a) (24) and 25(l), and recommends the following additions to section 33.29: In addition to the requirements of section 33.29, the engine must provide for a means to:

(a) Indicate and alert the pilot when the engine is at the 30-Second and 2-Minute OEI power levels when any such event begins and when the permitted time interval expire;

(b) Determine, in a positive manner after flight that the engine has been operated at either or both of these power levels; and

(c) Determine, after flight, the elapsed time of operation at each of these power levels.

The FAA agrees that the section should be modified to clarify the additional requirements to section 33.29. While not adopting the commenters recommendations word-for-word, the FAA has changed section 33.29 of these special conditions to reflect the commenters' changes.

Section 33.67 Fuel System

One commenter states the engine test runs must be performed to demonstrate the means for automatic control of 30-Second OEI ratings in addition to the automatic availability of those ratings.

The FAA agrees. This section is modified as recommended.

Section 33.83 Vibration Test

One commenter states that the last sentence of these proposed additional requirements is not satisfactory because the vibration survey is required to cover the 2-Minute OEI operation for speeds beyond the maximum permitted within the OEI flight envelope. The last sentence states that the survey may need to be extended to even higher speeds if there is any indication of a stress peak arising at the upper end of the survey speed, that conflicts with compliance with section 33.63 which would not require the survey to cover maximum rotational speeds beyond the operating range. The commenter suggests that the last sentence of the proposed addition to section 33.83 be changed to read: ''If there is any indication of a stress peak arising at the highest of those physical and corrected rotational speeds, the surveys shall be extended sufficiently to reveal the maximum stress values present except that the extension need not cover more than a further 2 percent point beyond those speeds.''

One commenter states that vibration survey be tested to 100 percent of the 30-Second OEI and 2-Minute OEI rotor speeds and any further speed margin requirements beyond the test speeds be addressed based upon requirements to further evaluate any stress peak arising at the maximum rotor speed.

The FAA does not agree with the test speed of 100 percent for the 2-Minute OEI rating, but agrees with the recommended 2 percentage point extension beyond the required test speeds. The purpose of survey speed extension is intended to cover inherent variations in vibratory response due to engine manufacturing and build tolerances that can result in peak stresses occurring at slightly different rotor speeds between engines and engine parts. This section is therefore changed as recommended.

Section 33.85 Calibration Test

One commenter states that the proposed additional requirement is not clear regarding the ''applicable endurance test'' definition under the proposed special conditions and recommends the following changes to read as: ''In addition to the requirements of section 33.85, tests performed at * * * during the applicable additional endurance test prescribed in section 33.87 as amended by these special conditions may be used. * * *''

The FAA agrees. For clarification, this section is changed as recommended.

Section 33.88 Engine Overtemperature Test

One commenter questions the logic for allowing shorter test duration of four minutes instead of five minutes for engines that incorporate a means for temperature limiting, but not for the engines without such a device. The commenter recommends that the overtemperature test duration should be four minutes for all engine models having the 30-Second OEI and 2-Minute OEI ratings.

The FAA does not agree. Since this engine has the added protection of a temperature limiter, an overtemperature condition of 75 degrees Fahrenheit and five-minute duration cannot reasonably be expected, and an overtemperature test at that level is considered excessively severe. However, the engines equipped and qualified to the 35 degrees Fahrenheit (19 degrees Celsius) and 4-minute test conditions will need provisions for predispatch operational status checking of the temperature limiters. The rational for 5 minutes and 75 degrees Fahrenheit overtemperature test conditions to engines not equipped with a temperature limiter is to apply the existing rule requirements.

Section 33.93 Teardown Inspection

One commenter states that the proposed additional requirements lack a requirement equivalent to the proposed section 33.93(b)(1) of SNPRM 89–27A, and suggests that the second sentence of the proposed additions to section 33.93 be changed to read: ''The engine must comply with section 33.93(a), but it may exhibit deterioration in excess of that permitted in section 33.93(b) and may * * *''.

The FAA agrees. The proposed change is an implied requirement of the additional requirements in this section,

and the recommendation is adopted accordingly.

After careful review of the available data and the comments noted above; the FAA determined that air safety and the public interest require the adoption of the special conditions with the changes described previously.

Conclusion

This action affects only certain novel or unusual design features on one model engine. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air Transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704, 14 CFR 21.16, 14 CFR 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Allison Engine Company (AE) Model 250–C40 turboshaft engine:

§ 33.4 Instructions for Continued Airworthiness.

In addition to the requirements of section 33.4, the mandatory inspection and maintenance actions required following the use of the 30-Second or 2-Minute OEI rating must be included in the airworthiness limitations section of the appropriate engine manuals.

§ 35.7 Engine Ratings and Operating Limitations.

In addition to the requirements of section 33.7, the following ratings are defined as:

(a) Rated 30-Second one engine inoperative (OEI) power: The approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under part 33 and this special conditions, for continued one-flight operation after the failure of one engine in multi-engine rotorcraft, limited to three periods of use, no longer than 30 seconds each, in any one flight, and followed by mandatory inspection and prescribed maintenance action.

(b) Rated 2-Minute OEI power: The approved brake horsepower, developed under static conditions at specified altitudes and temperatures, within the operating limitations established for the engine under part 33 and this special conditions, for continued one-flight operation after the failure of one engine in multi-engine rotorcraft, limited to three periods of use, of no longer than 2 minutes each in any one flight, and followed by mandatory inspection and prescribed maintenance action.

§ 33.27 Turbine, Compressor, Fan, and Turbo-supercharger Rotors.

In addition to the requirements of section 33.27(a) and (b), the following tests must be conducted for the most critically stressed rotor component of each turbine and compressor including integral drum rotors and centrifugal compressor, as determined by analysis or other acceptable means for 2-Minute and 30-Second OEI conditions:

(a) Test for a period of two and one-half minutes—

(1) At the maximum operating temperature except as provided in paragraph (c)(2)(iv) of this section; and

(2) At the highest speed determined, in accordance with section 33.27(c)(2)(i) through (iv).

(3) This test may be performed using a separate test vehicle as desired.

(b) The following additional test requirements must be considered under 33.27(e)(2)(v) and (vi):

(1) Test for a period of 5 minutes—

(i) At 100 percent of the highest speed that would result from failure of the most critical component of each turbine and compressor or system in a representative installation of the engine when operating at 30-Second and 2-Minute OEI rating conditions.

(ii) The test speed must take into account minimum material properties, maximum operating temperature, and the most adverse dimensional tolerances.

(c) Following the test, rotor growth and distress beyond dimensional limits for an overspeed condition is permitted for 30-Second and 2-Minute OEI rating only, provided the structural integrity of the rotor is maintained, as shown by a procedure acceptable to the Administrator.

§ 33.29 Instrument Connection.

In addition to the requirements of section 33.29, the engine must have a provision for a means to:

(a) Alert the pilot when the engine is at the 30-Second OEI and a 2-Minute OEI power levels;

(b) Determine, in a positive manner, that the engine has been operated at each rating; and

(c) Determine the elapsed time of operation of each rating.

§ 33.67 Fuel System.

In addition to the requirements of section 33.67, the engine must provide for a means for automatic availability and automatic control of the 30-Second OEI power; and engine test runs must be performed to demonstrate automatic functioning of both of these means.

§ 33.83 Vibration Test.

In addition to the requirements of section 33.83, the following additional test requirements must be considered under 33.83(a):

For 30-Second and 2-Minute OEI rating conditions, the vibration survey shall cover the ranges of power, and both the physical and corrected rotational speeds for each rotor system, corresponding to operations throughout the range of ambient conditions in the declared flight envelope, from the minimum rotor speed up to 103 percent of the maximum rotor speed permitted for 2-Minute OEI rating, and up to 100 percent of the maximum rotor speed permitted for 30-Second OEI rating speed. If there is any indication of a stress peak arising at the highest physical or corrected rotational speeds, the surveys shall be extended sufficiently to reveal the maximum stress values present except that the extension needs not cover more than a further 2 percent beyond those speeds.

§ 33.85 Calibration Test.

In addition to the requirements of section 33.85, tests performed at the 30-Second and 2-Minute OEI ratings, during the applicable additional endurance test prescribed in section 33.87 as amended by these special conditions, may be used to show compliance with the requirements of section 33.85.

§ 33.87 Endurance Test.

In addition to the requirements of section 33.87, an engine test must be conducted four times, using the following test sequence, for a total of not less than 120 minutes:

(a) Takeoff Power—three minutes at rated takeoff power.

(b) 30-Second OEI power—thirty seconds at rated 30-Second OEI power.

(c) 2-Minute OEI Power—two minutes at rated 2-Minutes OEI Power.

(d) 30-Minute OEI, Continuous OEI, or Maximum Continuous power—five minutes at rated 30-Minute OEI power, or rated Continuous OEI power, or rated Maximum Continuous power, whichever is greatest, except that during the first test sequence this period shall be 65 minutes.

(e) 50 Percent takeoff power—one minute at 50 percent takeoff power.

(f) 30-Second OEI power—thirty seconds at rated 30-Second OEI power.

(g) 2-Minute OEI power—two minutes at rated 2-Minute OEI power.

(h) Idle power—one minute at idle power.

§ 33.88 Engine Overtemperature Test.

In addition to the requirements of section 33.88, the following must be performed:

(a) For engines that do not provide a means for temperature limiting; conduct a test for a period of five minutes at the maximum permissible power-on RMP, with the gas temperature at least 75 degrees fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(b) For engines that provide a means for temperature limiting; conduct a test for a period of four minutes at the maximum permissible power-on RPM, with the gas temperature at least 35 degrees fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(c) A separate test engine may be used for each test.

(d) Following the test, rotor assembly growth and distress beyond serviceable limits for an overtemperature condition is permitted, provided the structural integrity of the rotor assembly is maintained, as shown by a procedure that is acceptable to the Administrator.

§ 33.93 Teardown Inspection.

In addition to the requirements of section 33.93, this special condition requires that the engine be completely disassembled after completing the additional testing of section 33.87. The engine must comply with section 33.93(a), but it may exhibit deterioration in excess of that permitted in section 33.93(b), and may include some engine parts and components that may be unsuitable for further use. It must be shown by procedures approved by the Administrator that the structural integrity of the engine, including mounts, cases, bearing supports, shafts and rotors, is maintained.

Issued in Burlington, Massachusetts, on November 16, 1995.

Jay J. Pardee,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–28842 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 95–CE–01–AD; Amendment 39–9441; AD 95–24–11]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Fairchild Aircraft SA226 and SA227 series airplanes. This action requires installing foreign object damage (FOD) barriers in the floorboards of the cockpit between the pedestal and floor from Fuselage Station (FS) 79.38 to FS 88.06 and on the outboard forward edge of the left-hand and right-hand cockpit forward floorboards at FS 79.38. Two incidents of objects falling through openings in the cockpit floor and jamming the elevator controls and the yoke prompted this action. The actions specified by this AD are intended to prevent airplane flight control jammings caused by objects falling through the cockpit floor openings.

DATES: Effective January 3, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 3, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–01–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5133; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes was published in the Federal Register on June 15, 1995 (60 FR 14235). The action proposed to require installing foreign object damage (FOD) barriers in the floorboards of the cockpit between the pedestal and floor from Fuselage Station (FS) 79.38 to FS 88.06 and on the outboard forward edge of the left-hand and right-hand cockpit forward floorboards at FS 79.38. Accomplishment of the proposed action would be in accordance with Fairchild Service Bulletin (SB) 226–53–012, Fairchild SB 227–53–005, or Fairchild SB CC7–53–002, all Issued: September 22, 1994, as applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter is in favor of the substance of the proposed rule, but feels that the FAA should have issued a final rule; request for comments, instead of a notice of proposed rulemaking (NPRM). Under current regulations, the FAA must issue an NPRM prior to issuing a final rule to allow the public the opportunity to comment, unless the FAA demonstrates that the unsafe condition is an urgent safety of flight condition. After reviewing all information related to this subject, the FAA made the determination prior to issuing the NPRM that the unsafe condition was not an urgent safety of flight conditon, and thus did not require final rule; request for comments, AD action. The AD is unchanged as a result of this comment.

No comments were received on the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 855 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $247,950. This figure is based on the assumption that no affected airplane owner/operator has incorporated the required modification and that parts have not been distributed to any owner/operator of the affected airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

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

For the reasons discussed above, I certify that this action (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) 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 final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ Section 39.13 [AMENDED]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–24–11 Fairchild Aircraft: Amendment 39–9441; Docket No. 95–CE–01–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial Nos.
SA226–T	All serial numbers.
SA226–T(B) ...	All serial numbers.
SA226–AT	All serial numbers.
SA226–TC	All serial numbers.
SA227–AT	All serial numbers.
SA227–AC	All serial numbers.
SA227–BC	All serial numbers.
SA227–TT	All serial numbers.
SA227–CC	CC784 and CC790 through CC863
SA227–DC	DC784 and DC790 through DC863

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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within the next 600 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent airplane flight control jammings caused by objects falling through the cockpit floor openings, accomplish the following:

(a) Install foreign object damage (FOD) barriers in the floorboards of the cockpit between the pedestal and floor from Fuselage Station (FS) 79.38 to FS 88.06 and on the outboard forward edge of the left-hand and right-hand cockpit forward floorboards at FS 79.38. Accomplish this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of either Fairchild Service Bulletin (SB) 226–53–012, Fairchild SB 227–53–005, or Fairchild SB CC7–53–002, all Issued: September 22, 1994, as applicable.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(d) The installation required by this AD shall be done in accordance with Fairchild Service Bulletin 226–53–012, Fairchild Service Bulletin 227–53–005, or Fairchild Service Bulletin CC7–53–002, all Issued: September 22, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(e) This amendment (39–9441) becomes effective on January 3, 1996.

Issued in Kansas City, Missouri, on November 17, 1995.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28794 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–83–AD; Amendment 39–9434; AD 95–24–02]

Airworthiness Directives; Boeing Model 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747SP series airplanes, that requires modification of the escape slide/raft on Door 2 of the airplane. This amendment is prompted by reports indicating that the escape slide/raft on Door 2 deployed onto the wing of the airplane and did not inflate automatically. The actions specified by this AD are intended to ensure that the escape slide/raft on Door 2 inflates automatically so that passengers are able to exit the airplane through Door 2 in the event of an emergency evacuation.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Monica Nemecek, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2773; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747SP series airplanes was published in the Federal Register on August 10, 1995 (60 FR 40783). That action proposed to require modification of the escape slide/raft on Door 2 of the airplane.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 45 Model 747SP series airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $259 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,548, or $379 per airplane.

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

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

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–24–02 Boeing: Amendment 39–9434. Docket 95–NM–83–AD.

Applicability: Model 747SP series airplanes equipped with BFGoodrich evacuation systems identified in BFGoodrich Service Bulletin 7A1255–25–275, dated February 25, 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 ensure the ability of passengers to exit the airplane through Door 2 in the event of an emergency evacuation, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the escape slide/raft on Door 2 in accordance with BFGoodrich Service Bulletin 7A1255–25–275, dated February 25, 1994.

(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, Seattle Aircraft Certification Office (ACO), 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, Seattle ACO.

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

(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.

(d) The modification shall be done in accordance with BFGoodrich Service Bulletin 7A1255–25–275, dated February 25, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Department 7916, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 9, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28795 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–49–AD; Amendment 39–9435; AD 95–24–03]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, -30, and -40 Series Airplanes, and KC–10 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10, -30, and -40 series airplanes, and KC–10 (military) airplanes, that requires inspections to detect corrosion or cracking of the lower front spar cap and the skin panel of the horizontal stabilizer, and repair of corroded or cracked parts. This amendment also requires eventual modification of the horizontal stabilizer, which terminates the inspection requirements. This action is prompted by reports indicating that corrosion,

caused by water entrapment, was found on the horizontal stabilizer. The actions specified by this AD are intended to prevent water entrapment and subsequent damage to the horizontal stabilizer, which could result in reduced controllability of the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5322; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10, -30, and -40 series airplanes, and KC–10 (military) airplanes was published in the Federal Register on June 13, 1995 (60 FR 31124). That action proposed to require repetitive visual inspections to detect corrosion or cracking of the lower front spar cap and the skin panel of the horizontal stabilizer, and repair of corroded or cracked parts. That action also proposed to require the eventual modification of the lower front spar cap and the lower front skin panel of the horizontal stabilizer, which would constitute terminating action for the repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 286 Model DC–10–10, DC–10–30, and DC–10–40 airplanes, and KC–10 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 142 airplanes of U.S. registry will be affected by this AD, that it will take approximately 26 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $221,520, or $1,560 per airplane.

The FAA estimates that it will take approximately 241 work hours per airplane to accomplish the terminating modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $124,906 per airplane. Based on these figures, the cost impact of the terminating modification is estimated to be $19,789,972, or $139,366 per airplane.

Based on the figures discussed above, the estimated cost impact of the requirements of this AD is expected to total $20,011,492, or $140,926 per airplane. This estimated cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–24–03 McDonnell Douglas: Amendment 39–9435. Docket 95–NM–49–AD.

Applicability: Model DC–10–10, -30, and -40 airplanes, and KC–10 (military) airplanes; as listed in McDonnell Douglas Service Bulletin 55–14, Revision 6, dated January 11, 1993, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) 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 reduced controllability of the airplane, due to a damaged horizontal stabilizer, accomplish the following:

(a) Within one year after the effective date of this AD, perform a visual inspection to detect corrosion or cracking of the lower front spar cap and skin panel of the horizontal stabilizer, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–14, Revision 5, dated August 24, 1990, or Revision 6, dated January 11, 1993.

(1) If no corrosion or cracking is found during this inspection, repeat this inspection thereafter at intervals not to exceed one year, until the modification required by paragraph (b) of this AD is accomplished.

(2) If any corrosion or cracking is found during this inspection, prior to further flight,

repair the corrosion and/or cracking, and add drain holes, in accordance with Table 1 of the service bulletin. Accomplishment of these repairs and modification constitutes terminating action for the repetitive inspection requirements of this AD.

(b) Perform the modification of the lower front spar cap and the skin panel of the horizontal stabilizer in accordance with McDonnell Douglas Service Bulletin 55–14, Revision 5, dated August 24, 1990, or Revision 6, dated January 11, 1993, at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(1) For Model DC–10–10 airplanes: Accomplish the modification prior to the accumulation of 42,000 total landings, or within five years after the effective date of the AD, whichever occurs later.

(2) For Model DC–10–30 and DC–10–40 airplanes: Accomplish the modification prior to the accumulation of 30,000 total landings, or within five years after the effective date of this AD, whichever occurs later.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), 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, Los Angeles ACO.

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

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

(e) The actions shall be done in accordance with McDonnell Douglas Service Bulletin 55–14, Revision 5, dated August 24, 1990, or Revision 6, dated January 11, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 9, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28796 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–50–AD; Amendment 39–9433; AD 95–24–01]

Airworthiness Directives; McDonnell Douglas Model DC–10–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC–10–10 series airplanes, that requires inspections of the wings to detect cracks in the aft spar lower cap, in certain stringer butterfly clips on the bulkheads, and in certain fastener holes; and repair, if necessary. This amendment also requires modification of those areas of the wings, which terminates the repetitive inspection requirements. This amendment is prompted by reports indicating that, during fatigue testing of the wing structure, cracks developed in the aft spar lower cap, in certain stringer butterfly clips, and in certain fastener holes due to fatigue-related stress. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could lead to the failure of the aft spar cap and consequently could reduce the structural integrity of the wing.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (310) 627–5322; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas DC–10–10 series airplanes was published in the Federal Register on June 16, 1995 (60 FR 31649). That action proposed to require repetitive eddy current inspections of the wings to detect cracks in the aft spar lower cap; in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000; and in the fastener holes of the access doors of the inboard upper surface. That action also proposed to require modification of those areas of the wings, which would constitute terminating action for the required repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 53 Model DC–10–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 262 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $125,609 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,490,437, or $141,329 per airplane.

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

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–24–01 McDonnell Douglas: Amendment 39–9433. Docket 95–NM–50–AD.

Applicability: Model DC–10–10 series airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) 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.

Note 2: Inspections and modifications required by paragraphs (g) and (h) of AD 94–23–01, amendment 39–9063, accomplished prior to the effective date of this amendment in accordance with McDonnell Douglas DC–10 Service Bulletin 57–123, dated June 8, 1993, or McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 6, dated February 25, 1991, are considered acceptable for compliance with the applicable inspections and modifications required by this amendment for the affected structure.

To prevent fatigue-related cracking, which could lead to the failure of the aft spar cap and subsequent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 15,000 total landings or within 2,000 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the wings to detect cracks in the aft spar lower cap, in the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and in the fastener holes of the access doors of the inboard upper surface, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992.

(1) If no cracks are detected, repeat the inspection thereafter at intervals not to exceed 2,000 landings until the modification required by paragraph (b) of this AD is accomplished.

(2) If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Prior to the accumulation of 42,000 total landings or within 5 years after the effective date of this AD, whichever occurs later, modify the aft spar lower cap, the stringer butterfly clips on the bulkheads at stations X_{ors}=372.000 and X_{ors}=402.000, and the fastener holes of the access doors of the inboard upper surface of the wings, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirement of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

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

(e) The inspections, repair, and modification shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 57–36, Revision 7, dated December 11, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 9, 1995.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28797 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–04–AD; Amendment 39–9436; AD 95–24–04]

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300 and A300–600 series airplanes, that requires repetitive eddy current inspections to detect cracks at the aft spar web of the wings, and repair, if necessary. This amendment is prompted by reports indicating that cracks have been found in the rear spar web of the wings between ribs 1 and 2 of an in-service airplane and during testing on the fatigue test wing; the cracking occurred due to fatigue-related high shear stress. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could result in reduced structural integrity of the wing.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300 and A300–600 series airplanes was published in the Federal Register on May 4, 1995 (60 FR 22011). That action proposed to require repetitive eddy current inspections to detect cracks at the aft spar web of the wings, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 89 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,020, or $180 per airplane.

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

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

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–24–04 Airbus Industrie: Amendment 39–9436. Docket 95–NM–04–AD.

Applicability: All Model A300 and Model A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) 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 fatigue-related cracking in the rear spar web of the wings, which could result in reduced structural integrity of the wing, accomplish the following:

(a) For Model A300 B2 series airplanes: Prior to the accumulation of 18,000 total flight cycles or within 1,400 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles.

(b) For Model A300 B4–103, and B4–2C series airplanes: Prior to the accumulation of 19,000 total flight cycles or within 1,400 flight cycles after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles.

(c) For Model A300 B4–200 series airplanes: Prior to the accumulation of 17,000 total flight cycles or within 1,400 flight cycles after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles.

(d) For Model A300–600 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, and F4–605R series airplanes: Prior to the accumulation of 21,600 flight cycles, perform an HFEC inspection to detect cracks at the aft spar web of the wings, in accordance with Airbus Service Bulletin A300–57–6059, dated August 12, 1994. Repeat the inspection thereafter at intervals not to exceed 5,700 flight cycles.

(e) If any crack is detected during any inspection required by this AD, prior to further flight, repair the crack in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994, or Airbus Service Bulletin A300–57–6059, dated August 12, 1994, as applicable; or in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(f) 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. 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.

(g) 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.

(h) The inspections and repairs shall be done in accordance with Airbus Service Bulletin A300–57–0213, dated August 12, 1994, or Airbus Service Bulletin A300–57–6059, dated August 12, 1994, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 9, 1995.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28798 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–114–AD; Amendment 39–9427; AD 95–23–07]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires visual inspections to detect cracking of the outboard and inboard surfaces of the upper spar angles of the wing pylons, and repair of any cracked upper spar angles. This amendment requires eddy current inspections to detect cracking of the upper spar angles on the left and right sides of the wing pylons, and replacement of the spar angles as terminating action for the inspections. This amendment is prompted by the development of a modification that positively addresses the unsafe condition. The actions specified by this AD are intended to prevent loss of load-carrying and fail-safe capability of the upper inboard spar cap of the wing pylon, which could subsequently reduce the structural integrity of the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of December 27, 1995.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–54A049 R01, Revision 1, dated February 7, 1995, listed in the regulations, was approved previously by the Director of the Federal Register as of March 17, 1995 (60 FR 11623, March 2, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–04–15, amendment 39–9167 (60 FR 11623, March 2, 1995), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the Federal Register on August 21, 1995 (60 FR 43415). The action proposed to continue to require visual inspections to detect cracking of the outboard and inboard surfaces of the upper spar angles on the number 1 and number 3 wing pylons. However, the action also proposed to require eddy current inspections to detect cracking on the forward end of the left and right sides of the upper spar angles on the number 1 and number 3 wing pylons, and replacement of the upper spar angles on the left and right sides of the number 1 and number 3 wing pylons.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 123 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD.

The visual inspections that are currently required by AD 95–04–15 and retained in this new AD take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $28,200, or $600 per airplane, per inspection.

The eddy current inspections that are required by this new AD will take approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $28,200, or $600 per airplane.

The new requirement to replace the spar angle that is required in this AD action will take approximately 440 work hours to accomplish the replacement of one spar angle per wing pylon (with two wing pylons per airplane), or 550 work hours to accomplish the replacement of two spar angles per wing pylon (with two wing pylons per airplane), at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the replacement requirement is estimated to be $26,400 to replace one spar angle per wing pylon (or $52,800 per airplane), or $33,000 to replace two spar angles per wing pylon (or $66,000 per airplane).

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

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9167 (60 FR 11623, March 2, 1995), and by adding a new airworthiness directive (AD), amendment 39–9427, to read as follows:

95–23–07 McDonnell Douglas: Amendment 39–9427. Docket 95–NM–114–AD. Supersedes AD 95–04–15, Amendment 39–9167.

Applicability: Model MD–11 series airplanes, certificated in any category, that are listed in the following service bulletins:

—McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995, identified as Groups II, III, and IV airplanes; and

—McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995.

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 (f) 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 loss of load-carrying and fail-safe capability of the upper inboard spar cap of the wing pylon, which could subsequently reduce the structural integrity of the airplane, accomplish the following:

(a) For Groups II, III, and IV airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995: Within 30 days after March 17, 1995 (the effective date of AD 95–04–15, amendment 39–9167), or within 60 days after accomplishing the immediately preceding visual inspection required by paragraph (b) of AD 95–04–15, whichever occurs later, perform a visual inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles, part numbers (P/N) AUB7519–1/–2, on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049 R01, Revision 1, dated February 7, 1995; or McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995. Repeat this inspection thereafter, prior to further flight, following each incident of excessive maneuver, turbulence overload (as defined in MD–11 Aircraft Maintenance Manual, chapter 05–51–01), or hard landing (as defined in MD–11 Aircraft Maintenance Manual, chapter 05–51–03).

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 60 days or 300 landings, whichever occurs earlier, until the requirements of paragraph (d) of this AD are accomplished.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 2: Paragraph (a) of this AD restates the requirement for an initial and repetitive inspections contained in paragraph (b) of AD 95–04–15. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 95–04–15, paragraph (a) of this AD requires that the next scheduled inspection be performed within 60 days or 300 landings, whichever occurs earlier, after the last inspection performed in accordance with paragraph (b) of AD 95–04–15.

(b) For Groups II, III, and IV airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995: Accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Within 30 days after the effective date of this AD, or within 60 days after accomplishing the immediately preceding visual inspection required by paragraph (a) of this AD, whichever occurs later: Perform a visual inspection to detect cracking of the outboard and inboard surfaces of the upper spar angles, P/N's AUB7519–1/–2, on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995. Repeat this inspection thereafter, prior to further flight, following each incident of excessive maneuver, turbulence overload (as defined in MD–11 Aircraft Maintenance Manual, Chapter 05–51–01), or hard landing (as defined in MD–11 Aircraft Maintenance Manual, Chapter 05–51–03).

(i) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 60 days or 300 landings, whichever occurs earlier, until the requirements of paragraph (d) of this AD are accomplished.

(ii) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(2) Within 15 months after the effective date of this AD, perform an eddy current inspection to detect cracking of the left and right angles of the upper spar angles on the forward end, P/N AUB7519–1/–2, on the number 1 and number 3 wing pylons, in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995.

(i) If no cracking is detected, repeat the eddy current inspection thereafter at intervals not to exceed 15 months, until the requirements of paragraph (d) of this AD are accomplished.

(ii) If any cracking is detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

(c) For Groups II, III, and IV airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995: At the applicable time specified in either paragraph (c)(1) or (c)(2) of this AD, submit a report of the results (positive findings only) of the inspections required by paragraph (b) of this AD to the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712; or fax the report to (310) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501et seq.) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (b) of this AD is accomplished after the effective date of this AD: Submit a report of positive findings within 10 days after performing any of the inspections required by paragraph (b) of this AD.

(2) For airplanes on which the inspection required by paragraph (b) of this AD is accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(d) For airplanes listed in McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995, accomplish the requirements of paragraphs (d)(1) and (d)(2) of this AD.

(1) For pylons on which no cracking of the upper spar angles has been detected during the inspections required by either paragraph (a) or (b) of this AD: Within 5 years after the effective date of this AD, replace the spar angles with new spar angles in accordance with McDonnell Douglas Service Bulletin MD11–54–049, dated March 31, 1995; or McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995.

(2) For pylons on which cracking of the upper spar angles has been repaired in accordance with Rohr Service Bulletin MD11 54–190, dated March 3, 1995: Within 15 months after accomplishment of the repair, replace the spar angles with new spar angles in accordance with McDonnell Douglas Service Bulletin MD11–54–049, dated March 31, 1995; or McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995.

(e) Replacement of the spar angles in accordance with McDonnell Douglas Service Bulletin MD11–54–049, dated March 31, 1995; or McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995, constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

(f) 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, Los Angeles Aircraft Certification Office (ACO), 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, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) 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.

(h) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–54A049 R01, Revision 1, dated February 7, 1995; McDonnell Douglas Alert Service Bulletin MD11–54A049 R03, Revision 03, dated May 18, 1995; McDonnell Douglas Service Bulletin MD11–54–049, dated March 31, 1995; and McDonnell Douglas Service Bulletin MD11–54–049 R01, Revision 1, dated May 18, 1995. The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–54A049 R01, Revision 1, dated February 7, 1995, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 17, 1995 (60 FR 11623, March 2, 1995). The incorporation by reference of the remainder of the service documents listed above is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28190 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–29–AD; Amendment 39–9432; AD 95–23–12]

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Model PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to The New Piper Aircraft, Inc. (Piper) Model PA–46–350P airplanes. This action requires installing a placard (to the right of the manifold pressure gauge in full view of the pilot) that specifies manifold pressure limits, and incorporating a revision into the Limitations section of the Pilot's Operating Handbook (POH). The actions specified by this AD are intended to prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits.

DATES: Effective January 8, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–29–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Model PA–46–350P airplanes was published in the Federal Register on June 5, 1995 (60 FR 29511). The action proposed installing a placard (to the right of the manifold pressure gauge in full view of the pilot) that specifies manifold pressure limits. The proposed action would also require incorporating revised page 2–16 (dated March 29, 1995) of Revision 14 (PR950329) to Report: VB–1332 into the Limitations Section of the PA–46–350P POH. Piper Service Bulletin (SB) No. 982, dated April 3, 1995, contains the placard, and instructions on installing the placard and incorporating the POH revision. The proposed AD will allow an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) to perform these actions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). Although the unsafe condition can develop as a result of airplane usage, it cannot develop unless the manifold pressure limits specified in the required action are exceeded. Therefore, to ensure that all owners/operators of the affected airplanes incorporate the manifold pressure limits in a reasonable amount of time, a compliance based on calendar time is utilized.

The FAA estimates that 189 airplanes in the U.S. registry will be affected by this AD and that it will take approximately 1 workhour per airplane to accomplish the required action. Since an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this action, the only impact this action would have upon the public is the time it takes each owner/operator to install the placard and incorporate the POH revision. Accomplishment of the required action would be in accordance with Piper SB No. 982, dated April 3, 1995, which contains the placard, and instructions on installing the placard and incorporating the POH revision.

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

For the reasons discussed above, I certify that this action (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) 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 final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

95–23–12. The New Piper Aircraft, Inc., (formerly Piper Aircraft Corporation): Amendment 39–9432; Docket No. 95–CE–29–AD.

Applicability: Model PA–46–350P airplanes, serial numbers 4622001 through 4622189, 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 request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 2 calendar months after the effective date of this AD, unless already accomplished.

To prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits, accomplish the following:

(a) Install a placard (to the right of the manifold pressure gauge in full view of the pilot) that specifies the following manifold pressure limits:

DO NOT EXCEED
36'' MP
BELOW 2400 RPM
32'' MP
BELOW 2300 RPM

Accomplish this installation in accordance with Piper Service Bulletin (SB) No. 982, dated April 3, 1995. This placard is included with the referenced service bulletin.

(b) Incorporate revised page 2–16 (dated March 29, 1995) of Revision 14 (PR950329) to Report: VB–1332 into the Limitations Section of the PA–46–350P Pilot's Operating Handbook (POH). Piper SB No. 982, dated April 3, 1995, contains the instructions for incorporating this POH revision.

(c) Installing the placard and incorporating the POH revision as required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(f) The installation and incorporation required by this AD shall be done in accordance with Piper Service Bulletin (SB) No. 982, dated April 3, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(g) This amendment (39–9432) becomes effective on January 8, 1996.

Issued in Kansas City, Missouri on November 8, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28847 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–209–AD; Amendment 39–9439; AD 95–24–07]

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –231 series airplanes, that requires modification of the aileron support frame of the wings. This amendment is prompted by reports indicating that tensile cracks have been found at a certain mounting hinge of the aileron support frame during full scale fatigue testing of the test article due to fatigue-related stress. The actions specified by this AD are intended to prevent such fatigue-related cracking, which could result in loss of the aileron control surface and the inability of the pilot to control rolling moments of the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 series airplanes was published in the Federal Register on June 16, 1995 (60 FR 31651). That action proposed to require modification of the aileron support frame of the wings.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 54 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $31,481 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $173,605, or $34,721 per airplane.

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

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

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

95–24–07 Airbus Industrie: Amendment 39–9439. Docket 94–NM–209–AD.

Applicability: Model A320–111, –211, and –231 series airplanes, serial numbers 005 though 043 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (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 fatigue-related cracking at the mounting hinge of the aileron support frames of the wings, which could result in loss of the aileron control surface and the inability of the pilot to control rolling moments of the airplane, accomplish the following:

(a) Prior to the accumulation of 14,000 flight cycles or within 500 flight cycles after the effective date of this AD, whichever occurs later, modify the aileron support frames of the wings, in accordance with Airbus Service Bulletin A320–57–1002, Revision 1, dated May 12, 1993.

(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.

(d) The modification shall be done in accordance with Airbus Service Bulletin A320–57–1002, Revision 1, dated May 12, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28523 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–141–AD; Amendment 39–9440; AD 95–24–08]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires replacement of the check valves of the thrust reverser with modified valves on certain airplanes and the replacement of the manual control valves of the thrust reverser with modified valves on certain other airplanes. This amendment is prompted by recent engineering analysis, which revealed that, if the non-return valve installed on the hydraulic return line of the thrust reverser were to jam in the closed position, it could cause pressurization of the Hydraulic Control Unit (HCU). The actions specified by this AD are intended to prevent such pressurization of the HCU due to jamming of the non-return valve in the hydraulic return line, and consequent deployment of a thrust reverser during flight; this condition, if not corrected, could adversely affect the controllability of the airplane.

DATES: Effective December 27, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the Federal Register on November 14, 1994 (59 FR 56433). That action proposed to require replacing the thrust reverser check valves with modified valves on Engine 1 and Engine 2 of airplanes equipped with CFM series engines. It also proposed to require replacing the thrust reverser manual control valves with modified valves on the Engine 1 and Engine 2 of airplanes equipped with International Aero Engines (IAE) engines.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposal.

Just prior to the publication of the proposal, Airbus issued Service Bulletin A320–29–1048, Revision 2, dated September 1, 1994. This revision is essentially identical to Revision 1, which was cited in the proposal as the appropriate source of service information; it differs only in the listing of the current operators of affected airplanes. The FAA has revised the final rule to include Revision 2 of the service bulletin as an additional source of service information.

Additionally, as a result of 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 added to this final rule to clarify this long-standing requirement.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,540, or $180 per airplane. This cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (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) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13—[Amended]

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

95–24–08 Airbus: Amendment 39–9440. Docket 94–NM–141–AD.

Applicability: Model A320 series airplanes; as listed in Airbus Industrie Service Bulletin A320–29–1048, Revision 1, dated December 4, 1992, and Revision 2, dated September 1, 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 otherwise 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 deployment of a thrust reverser during flight, which could adversely affect the controllability of the airplane, accomplish the following:

(a) Within 5 months after the effective date of the AD, accomplish the requirements of paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Airbus Industrie Service Bulletin A320–29–1048, Revision 1, dated December 4, 1992, or Revision 2, dated September 1, 1994.

(1) For airplanes equipped with CFM series engines: Replace the Engine 1 and Engine 2 check valves of the thrust reverser in the nacelle with modified valves as specified in the service bulletin.

(2) For airplanes equipped with International Aero Engines (IAE): Replace the Engine 1 and Engine 2 manual control valves of the thrust reverser on the pylon with modified valves as specified in 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.

(d) The replacements shall be done in accordance with the following Airbus service bulletins, which contain the specified list of effective pages:

Service bulletin No. and date	Page No.	Revision level shown on page	Date shown on page
A320–29–1048, Revision 2, September 1, 1994	1–5	2	September 1, 1994.
	7–8, 11,	1	December 4, 1992.
	6, 9–10, 12–15	Original	April 7, 1992.
A320–29–1048, Revision 1, December 4, 1992	1–3, 5, 7–8, 11,	1	December 4, 1992.
	4, 6, 9–10, 12–15	Original	April 7, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 27, 1995.

Issued in Renton, Washington, on November 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28525 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 670

[Docket No. 950825218–5263–02; I.D. 073195A]

RIN 0648–AE47

Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands; Initial Regulations; OMB Control Numbers

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved measures of the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (FMP). This rule restricts the taking of coral reef resources in or from the exclusive economic zone (EEZ) around Puerto Rico and the U.S. Virgin Islands. NMFS disapproved two measures of the FMP that would have adopted state permit and reporting requirements, because the state permit systems are not yet fully developed, and the state regulations authorizing these permits, where they exist, do not satisfy the requirements of the Administrative Procedure Act, the Magnuson Fishery Conservation and Management Act (Magnuson Act), and other applicable laws. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections. The intended effect of this rule is to protect important marine resources.

EFFECTIVE DATES: December 27, 1995, except for § 670.23(b), which becomes effective March 1, 1996.

ADDRESSES: Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-570-5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Caribbean Fishery Management Council (Council) under the authority of the Magnuson Act.

The background and rationale for the measures in the FMP, and the rationale for disapproval of two measures that would have adopted state permit and reporting requirements, were included in the proposed rule (60 FR 46806, September 8, 1995) and are not repeated here.

Comments and Responses

Comments were received from the U.S. Coast Guard (USCG), the U.S. Fish and Wildlife Service (USFWS), and the Center for Marine Conservation (CMC). The USCG noted that it was involved in the development of the FMP and had no enforcement or safety concerns.

Comment: USFWS offered its ''strongest possible support for the measures'' and recommended that the Commonwealth of Puerto Rico work closely with the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, and the U.S. Customs Service, in its enforcement and implementation of compatible permit and enforcement programs.

Response: NMFS agrees with this comment.

Comment: USFWS notes that the FMP specifically addresses the aquarium trade in live organisms but does not fully address the collection of coral reef resources for the curio trade. USFWS points out that some mollusks such as triton's trumpet (*Charonia variegata*) and helmet shells (*Cassis* spp.) may become increasingly rare due to commercial shell collecting.

Response: Although some coral reef resources are used in local handicrafts, most organisms sold as curios and used in handicrafts in Puerto Rico are imported, primarily from the Philippines. Commercial shell collecting does not appear to be a problem, at least not in Puerto Rico. However, the FMP's restrictions on taking of coral reef resources apply equally to harvest and sale of live organisms and harvest and sale of organisms taken for eventual use in the curio trade.

Comment: USFWS recommended that specific information on scientific and other permitting procedures be included as part of the FMP.

Response: NMFS agrees and has advised the Council to incorporate this information through an amendment to the FMP once the states have completed the development of their respective permit systems.

Comment: CMC supports the rule and further notes the importance of live rock as fishery habitat. CMC believes that harvest of coral reef resources can threaten local economies that may be dependent on healthy reef systems for fishing and nonconsumptive uses.

Response: NMFS agrees with the CMC's comments.

Classification

The Regional Director, Southeast Region, NMFS, determined that the FMP is necessary for the conservation and management of coral reef resources of Puerto Rico and the U.S. Virgin Islands and that it is consistent with the Magnuson Act and other applicable law, with the exception of those measures that were previously disapproved. (See the proposed rule (60 FR 46806, September, 8, 1995) for a discussion of the disapproved measures.)

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

The Council prepared a final environmental impact statement (FEIS) for the FMP; a notice of availability for public comment was published on August 8, 1995 (60 FR 40340. According to the FEIS, the restrictions in the FMP would benefit the natural environment by prohibiting activities that damage live bottom habitat areas.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the proposed rule (60 FR 46806, September 8, 1995). As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains two collection-of-information requirements subject to the PRA. The first is the requirement for vessel identification. The second is a documentation of origin of prohibited species that are for sale in Puerto Rico or the U.S. Virgin Islands. These collections have been approved by OMB under OMB control numbers 0648–0306 and 0303. The public reporting burdens for these collections of information are estimated to average 15 minutes and 45 minutes per response, respectively. This includes 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 reporting burden estimate, or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 670

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 20, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by adding in the left column under 50 CFR, in numerical order,''670.6'' and ''670.23'', and in the right column, in corresponding positions, the control numbers ''- 0306.'' and ''–0303.''

50 CFR Chapter VI

3. Part 670 is added to read as follows:

PART 670—-CORAL REEF RESOURCES OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Subpart A—General Provisions

Sec.

Subpart B—Management Measures

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

Subpart A—General Provisions

§ 670.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of coral reef resources in or from the EEZ around Puerto Rico and the U.S. Virgin Islands. ''EEZ'' in this part refers to the EEZ in those geographical areas, unless the context clearly indicates otherwise.

§ 670.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Coral reef resource means one or more of the following, or a part thereof, whether living or dead:

Sponges—Class Demospongiae

Aphimedon compressa, Erect rope sponge
Chondrilla nucula, Chicken liver sponge
Cynachirella alloclada
Geodia neptuni, Potato sponge
Haliclona sp., Finger sponge
Myriastra sp.
Niphates digitalis, Pink vase sponge
N. erecta, Lavender rope sponge
Spinosella policifera
S. vaginalis
Tethya crypta

Hydrocorals—Class Hydrozoa

Hydroids—Order Athecatae

Family Milleporidae
Millepora spp., Fire corals
Family Stylasteridae
Stylaster roseus, Rose lace corals

Anthozoans—Class Anthozoa

Soft corals—Order Alcyonacea

Family Anthothelidae
Erythropodium caribaeorum, Encrusting gorgonian
Iciligorgia schrammi, Deepwater sea fan
Family Briaridae
Briareum asbestinum, Corky sea finger
Family Clavulariidae
Carijoa riisei
Telesto spp.

Gorgonians—Order Gorgonacea

Family Ellisellidae
Ellisella spp., Sea whips
Family Gorgoniidae
Gorgonia flabellum, Venus sea fan
G. mariae, Wide-mesh sea fan
G. ventalina, Common sea fan
Pseudopterogorgia acerosa, Sea plume
P. albatrossae
P. americana, Slimy sea plume
P. bipinnata, Bipinnate plume
P. rigida
Pterogorgia anceps, Angular sea whip
P. citrina, Yellow sea whip
Family Plexauridae
Eunicea calyculata, Warty sea rod
E. clavigera
E. fusca, Doughnut sea rod
E. knighti
E. laciniata
E. laxispica
E. mammosa, Swollen-knob
E. succinea, Shelf-knob sea rod
E. touneforti
Muricea atlantica
M. elongata, Orange spiny rod
M. laxa, Delicate spiny rod
M. muricata, Spiny sea fan
M. pinnata, Long spine sea fan
Muriceopsis sp.
M. flavida, Rough sea plume
M. sulphurea
Plexaura flexuosa, Bent sea rod
P. homomalla, Black sea rod
Plexaurella dichotoma, Slit-pore sea rod
P. fusifera
P. grandiflora
P. grisea
P. nutans, Giant slit-pore
Pseudoplexaura crucis
P. flagellosa
P. porosa, Porous sea rod
P. wagenaari

Hard Corals—Order Scleractinia

Family Acroporidae
Acropora cervicornis, Staghorn coral
A. palmata, Elkhorn coral
A. prolifera, Fused staghorn
Family Agaricidae
Agaricia agaricities, Lettuce leaf coral
A. fragilis, Fragile saucer
A. lamarcki, Lamarck's sheet
A. tenuifolia, Thin leaf lettuce
Leptoseris cucullata, Sunray lettuce
Family Astrocoeniidae
Stephanocoenia michelinii, Blushing star
Family Caryophyllidae
Eusmilia fastigiata, Flower coral
Tubastrea aurea, Cup coral
Family Faviidae
Cladocora arbuscula, Tube coral
Colpophyllia natans, Boulder coral
Diploria clivosa, Knobby brain coral
D. labyrinthiformis, Grooved brain
D. strigosa, Symmetrical brain
Favia fragum, Golfball coral
Manicina areolata, Rose coral
M. mayori, Tortugas rose coral
Montastrea annularis, Boulder star coral
M. cavernosa, Great star coral
Solenastrea bournoni, Smooth star coral
Family Meandrinidae
Dendrogyra cylindrus, Pillar coral
Dichocoenia stellaris, Pancake star
D. stokesi, Elliptical star
Meandrina meandrites, Maze coral
Family Mussidae
Isophyllastrea rigida, Rough star coral
Isophyllia sinuosa, Sinuous cactus
Mussa angulosa, Large flower coral
Mycetophyllia aliciae, Thin fungus coral
M. danae, Fat fungus coral
M. ferox, Grooved fungus
M. lamarckiana, Fungus coral
Scolymia cubensis, Artichoke coral
S. lacera, Solitary disk
Family Oculinidae
Oculina diffusa, Ivory bush coral
Family Pocilloporidae
Madracis decactis, Ten-ray star coral
M. mirabilis, Yellow pencil
Family Poritidae
Porites astreoides, Mustard hill coral
P. branneri, Blue crust coral
P. divaricata, Small finger coral
P. porites, Finger coral
Family Rhizangiidae
Astrangia solitaria, Dwarf cup coral
Phyllangia americana, Hidden cup coral
Family Siderastreidae
Siderastrea radians, Lesser starlet
S. siderea, Massive starlet

Black Corals—Order Antipatharia

Antipathes spp., Bushy black coral
Stichopathes spp., Wire coral

Anemones—Order Actiniaria

Aiptasia tagetes, Pale anemone
Bartholomea annulata, Corkscrew anemone
Condylactis gigantea, Giant pink-tipped anemone
Hereractis lucida, Knobby anemone
Lebrunia spp., Staghorn anemone
Stichodactyla helianthus, Sun anemone

Colonial Anemones—Order Zoanthidea

Zoanthus spp., Sea mat

False Corals—Order Corallimorpharia

Discosoma spp. (formerly *Rhodactis*), False coral
Ricordia florida, Florida false coral

Polychaetes—Class Polychaeta

Family Sabellidae, Feather duster worms
Sabellastarte spp., Tube worms
S. magnifica, Magnificent duster
Family Serpulidae
Spirobranchus giganteus, Christmas tree worm

Gastropods—Class Gastropoda

Family Elysiidae

Tridachia crispata, Lettuce sea slug
Family Olividae
Oliva reticularis, Netted olive
Family Ovulidae
Charonia tritonis, Atlantic triton trumpet
Cyphoma gibbosum, Flamingo tongue
Family Strombidae, Winged conchs
Strombus spp. (except Queen conch, *S. gigas*)

Bivalves—Class Bivalvia

Family Limidae
Lima spp., Fileclams
L. scabra, Rough fileclam
Family Spondylidae
Spondylus americanus, Atlantic thorny oyster

Cephalopods—Class Cephalopoda

Octopuses—Order Octopoda

Family Octopodidae
Octopus spp. (except the Common octopus, *O. vulgaris*)

Crustaceans—Class Crustacea

Decapods—Order Decapoda

Family Alpheidae
Alpheaus armatus, Snapping shrimp
Family Diogenidae
Paguristes spp., Hermit crabs
P. cadenati, Red reef hermit
Family Grapsidae
Percnon gibbesi, Nimble spray crab
Family Hippolytidae
Lysmata spp., Peppermint shrimp
Thor amboinensis, Anemone shrimp
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus,, Green clinging
Stenorhynchus seticornis, Yellowline arrow
Family Majidae, Coral crabs
Mithrax spp., Clinging crabs
M. cinctimanus, Banded clinging
M. sculptus,, Green clinging
Stenorhynchus seticornis, Yellowline arrow
Family Palaemonida
Periclimenes spp., Cleaner shrimp
Family Squillidae, Mantis crabs
Gonodactylus spp.
Lysiosquilla spp.
Family Stenopodidae, Coral shrimp
Stenopus hispidus, Banded shrimp
S. scutellatus, Golden shrimp

Bryozoans—Phylum Bryozoa

Starfish—Class Stelleroidea

Analcidometra armata, Swimming crinoid
Astropecten spp., Sand stars
Astrophyton muricatum, Giant basket star
Davidaster spp., Crinoids
Linckia guildingii, Common comet star
Nemaster spp., Crinoids
Ophidiaster guildingii, Comet star
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
O. rubicundum, Ruby brittlestar
Oreaster reticulatus, Cushion sea star

Sea Urchins—Class Echinoidea

Diadema antillarum, Long-spined urchin
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Lytechinus spp., Pin cushion urchin
Tripneustes ventricosus, Sea egg

Sea Cucumbers—Class Holothuroidea

Holothuria spp., Sea cucumbers

Tunicates—Subphylum Urochordata

Green Algae—Phylum Chlorophyta

Caulerpa spp., Green grape algae
Halimeda spp., Watercress algae
Penicillus spp., Neptune's brush
Udotea spp., Mermaid's fan
Ventricaria ventricosa, Sea pearls

Red Algae—Phylum Rhodophyta

Sea grasses—Phylum Angiospermae

Halodule wrightii, Shoal grass
Halophila spp., Sea vines
Ruppia maritima, Widgeon grass
Syringodium filiforme, Manatee grass
Thalassia testudium, Turtle grass

Gorgonian means a coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea.

Live rock means a coral reef resource attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

Prohibited species means a gorgonian, a live rock, or a stony coral, or a part thereof.

Regional Director means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 813-570-5301; or a designee.

Science and Research Director means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761; or a designee.

Scientific, educational, or restoration purpose means the objective of gaining knowledge for the benefit of science, humanity, or management of coral reef resources or restoring a disturbed habitat as closely as possible to its original condition.

Stony coral means a coral reef resource—

(1) Of the Class Hydrozoa (fire corals and hydrocorals); or

(2) Of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

§ 670.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

§ 670.4 Permits. [Reserved]

§ 670.5 Recordkeeping and reporting.

A person possessing a coral reef resource in or from the EEZ is required upon request to make such coral reef resource available for inspection by the Science and Research Director or an authorized officer.

§ 670.6 Vessel identification.

(a) *Official number.* A vessel that fishes for or possesses coral reef resources in or from the EEZ must display its official number—

(1) On the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of a vessel that fishes for or possesses coral reef resources in or from the EEZ must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number from an enforcement vessel or aircraft.

§ 670.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fail to make a coral reef resource in or from the EEZ available for inspection, as specified in § 670.5.

(b) Falsify or fail to display and maintain vessel identification, as required by § 670.6.

(c) Fish for or possess a prohibited species in or from the EEZ, as specified in § 670.21.

(d) Use an explosive to harvest a coral reef resource in the EEZ or possess dynamite or a similar explosive substance on board a vessel, as specified in § 670.22(a).

(e) Use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ, as specified in § 670.22(b).

(f) Harvest a coral reef resource in the EEZ other than as specified in § 670.22(c).

(g) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or

sell, a prohibited species harvested in the EEZ, as specified in § 670.23(a).

(h) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a coral reef resource.

(i) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 670.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 670.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 670.20 Fishing year.

The fishing year for coral reef resources begins on January 1 and ends on December 31.

§ 670.21 Harvest limitations.

No person may fish for or possess a prohibited species in or from the EEZ. The taking of a prohibited species in the EEZ as incidental catch will not be considered unlawful possession of a prohibited species provided it is returned immediately to the sea in the general area of fishing.

§ 670.22 Gear restrictions.

(a) An explosive may not be used to harvest a coral reef resource in the EEZ. Dynamite or a similar explosive substance may not be possessed on board a vessel that possesses a coral reef resource in or from the EEZ.

(b) No person may use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ.

(c) A coral reef resource in the EEZ may be harvested only with a hand-held dip net or slurp gun, or by hand in a manner that does not injure or destroy a coral reef resource or its habitat. For the purposes of § 670.7(f) and this paragraph (c), a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber.

§ 670.23 Restrictions on sale or purchase.

(a) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a prohibited species harvested in the EEZ.

(b) Effective March 1, 1996, a prohibited species that is sold or exchanged, or offered for sale or exchange, in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the EEZ unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(1) The information specified in 50 CFR part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The name and home port of the vessel, or the name and address of the individual, harvesting the prohibited species;

(3) The port and date of landing the prohibited species; and

(4) A statement signed by the person selling or exchanging, or offering for sale or exchange, the prohibited species attesting that, to the best of his or her knowledge, information, and belief, such prohibited species was harvested other than in the EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

§ 670.24 Specifically authorized activities.

The Regional Director may authorize the harvest and possession of a prohibited species in or from the EEZ for a scientific, educational, or restoration purpose and may authorize activities otherwise prohibited by the regulations in this part for the acquisition of information and data.

[FR Doc. 95–28882 Filed 11–24–95; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 498

RIN 0960–AE33

Social Security Programs: Fraud and Abuse; Establishment of New Part 498 to Address Civil Monetary Penalties, Assessments and Exclusions

AGENCY: Office of the Inspector General (OTG), SSA.

ACTION: Final rule.

SUMMARY: This final rule establishes a new part 498, which will serve as a repository for the Social Security Administration's existing civil monetary penalty authorities and which will reflect and implement new civil monetary penalty authorities provided under the Social Security Independence and Program Improvements Act of 1994. In the first phase of this process, the Social Security Administration in this final rule will relocate its existing regulations for misuse of Social Security program words, letters, symbols, and emblems to part 498. In addition, the existing regulations will be updated in this final rule to reflect nondiscretionary changes made by the Social Security Independence and Program Improvements Act of 1994.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Judith A. Kidwell, Office of the Inspector General, (410) 965–9750 or Glenn Sklar, Office of the General Counsel, (410) 965–6247.

SUPPLEMENTARY INFORMATION:

Background

Section 101 of Public Law (Pub. L.) 103–296, the Social Security Independence and Program Improvements Act of 1994 (SSIPIA), established the Social Security Administration (SSA) as an independent agency in the Executive Branch effective March 31, 1995. Previously, SSA had been a component of the Department of Health and Human Services (HHS).

In creating an independent SSA, the SSIPIA also established an independent Office of the Inspector General (OIG) within SSA, and authorized the Commissioner of Social Security (Commissioner) to delegate authority to impose certain civil monetary penalties (CMPs). In order to properly reflect its delegated authority with respect to CMPs, the OIG is establishing 20 CFR part 498. This part will: (1) Incorporate existing CMP authorities for misuse of Social Security program words, letters, symbols, and emblems which had previously been located in 42 CFR part 1003; (2) establish a new location for newly designated and future CMP provisions; (3) set forth the basis for any OIG penalty authorities and the factors to be considered in determining penalty amounts; and (4) detail the hearing process to be utilized in the imposition of these CMP provisions.

New Authorities for SSA Inspector General

Section 1129 of the Social Security Act

Section 206(b) of the SSIPIA provided expanded authority for SSA to impose CMPs and assessments against persons who make false statements or representations for use in determining any initial or continuing right to or amount of benefit payments under title II or title XVI of the Social Security Act (the Act), if such person knew or should have known that the statement was false, misleading or omitted a material fact. Section 206(b) of the SSIPIA added section 1129 to the Act, effective October 1, 1994, and section 108 of the SSIPIA made additional conforming amendments effective March 31, 1995. This section 1129 authority to impose CMPs, including the authority to issue implementing rules, was delegated to

the Inspector General (IG) of Social Security by the Commissioner on June 28, 1995. Because the regulations implementing section 1129 will involve discretionary issues they will be developed in a separate notice of proposed rulemaking. We have reserved certain sections in this final rule to accommodate the regulations reflecting and implementing section 1129 and will finalize them after we have received and considered public comments.

Section 1140 of the Social Security Act

The SSIPIA also includes several changes to section 1140 of the Act that require us to alter the scope and content of the existing misuse of program words, letters, symbols, and emblems penalty regulations currently located at 42 CFR 1003. Specifically, section 312 of the SSIPIA amended section 1140 of the Act by adding several provisions which broaden existing deterrents against misleading mailings and advertisements directly involving the SSA. Section 312 of the SSIPIA: (1) Broadened the list of prohibited words, symbols and acronyms subject to a violation; (2) revised the standard of conduct for determining a violation; (3) exempted any State agency (or any instrumentality or political subdivision of the State) from the prohibited use of these program words, letters, symbols, or emblems where such use serves to identify these entities; (4) specifically defined a violation in regard to mailings; (5) eliminated the annual penalty cap of $100,000; (6) eliminated the use of a disclaimer as a defense to a violation under this provision; and (7) repealed the provision that required a formal declination to be obtained from the Department of Justice before pursuing a CMP case under section 1140 of the Act.

Section 312 of the SSIPIA also includes a prohibition against reproducing, reprinting, or distributing forms, applications, or other publications of the SSA for a fee, unless the person has obtained written authorization in accordance with regulations prescribed by the Commissioner. These regulations will involve discretionary issues and will be published in a separate notice of proposed rulemaking.

Hearing Process

The Act mandates that all individuals subject to the imposition of a CMP be provided with the opportunity for a hearing. We are reserving 20 CFR 498.200 *et seq.* to address the CMP hearing process which will be developed at a future date.

The Handling of Dual Violations

The SSA/OIG and the HHS/OIG may make separate and independent determinations in regard to violations of section 1140 of the Act and impose separate CMPs against individuals, entities or organizations who make prohibited use of both the SSA and HHS program words, letters, symbols, or emblems in the same advertisement or solicitation.

Regulatory Procedures

Waiver of Proposed Rulemaking

When developing our regulations, we follow the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA provides an exception to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures in this case. Good cause exists because this rulemaking reflects the statutory amendments to section 1140 of the Act, with no issues of policy discretion. Therefore, opportunity for prior comment is unnecessary and we are issuing these changes to our regulations as a final rule.

Waiver of 30-Day Delay in Effective Date

We find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, the only substantive changes we are making merely reflect legislation and involve no discretionary policy. Thus, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis consistent with Pub. L. 96–354, the Regulatory Flexibility Act, unless the IG certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While some sanctions and penalties provided for under the Act may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. In either case, we do not anticipate that a substantial number of small entities will be significantly affected by this revised rulemaking. Therefore, we have concluded, and the IG certifies, that a regulatory flexibility analysis is not required for this final rule.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 498

Administrative practice and procedure, Fraud, Penalties.

Approved: October 10, 1995.

June Gibbs Brown,

Inspector General.

20 CFR chapter III is amended by adding part 498 to read as follows:

PART 498—CIVIL MONETARY PENALTIES, ASSESSMENTS AND RECOMMENDED EXCLUSIONS

Sec.

Authority: Secs. 702(a)(5) and 1140 of the Social Security Act (42 U.S.C. 902(a)(5) and 1320b–10).

§ 498.100 Basis and purpose.

(a) *Basis.* This part implements section 1140 of the Social Security Act (42 U.S.C. 1320b–10).

(b) *Purpose.* This part provides for the imposition of civil monetary penalties against persons who—

(1) [Reserved]

(2) Misuse certain Social Security program words, letters, symbols, and emblems.

§ 498.101 Definitions.

As used in this part:

Agency means the Social Security Administration.

Commissioner means the Commissioner of Social Security or his or her designees.

Department means the U.S. Department of Health and Human Services.

General Counsel means the General Counsel of the Social Security Administration or his or her designees.

Inspector General means the Inspector General of the Social Security Administration or his or her designees.

Penalty means the amount described in § 498.103 and includes the plural of that term.

Person means an individual, organization, agency, or other entity.

Respondent means the person upon whom the Commissioner or the Inspector General has imposed, or intends to impose, a penalty.

Secretary means the Secretary of the U.S. Department of Health and Human Services or his or her designees.

SSA means the Social Security Administration.

SSI means Supplemental Security Income.

§ 498.102 Basis for civil monetary penalties.

(a) [Reserved]

(b) The Office of the Inspector General may impose a penalty against any person whom it determines in accordance with this part has made use of certain Social Security program words, letters, symbols, or emblems in such a manner that they knew or should have known would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that an advertisement or other item was authorized, approved, or endorsed by the Social Security Administration, or that such person has some connection with, or authorization from, the Social Security Administration.

(1) Civil monetary penalties may be imposed for misuse, as set forth in § 498.102(b), of—

(i) The words ''Social Security,'' ''Social Security Account,'' ''Social Security Administration,'' ''Social Security System,'' ''Supplemental Security Income Program,'' or any combination or variation of such words; or

(ii) The letters ''SSA,'' or ''SSI,'' or any other combination or variation of such letters; or

(iii) A symbol or emblem of the Social Security Administration (including the design of, or a reasonable facsimile of the design of, the Social Security card, the check used for payment of benefits under title II, or envelopes or other stationery used by the Social Security Administration), or any other combination or variation of such symbols or emblems.

(2) Civil monetary penalties will not be imposed against any agency or instrumentality of a State, or political subdivision of a State, that makes use of any symbol or emblem, or any words or letters which identify that agency or instrumentality of the State or political subdivision.

(c) The use of a disclaimer of affiliation with the United States Government, the Social Security Administration or its programs, or any other agency or instrumentality of the United States Government, will not be considered as a defense in determining a violation of section 1140 of the Social Security Act.

§ 498.103 Amount of penalty.

(a) [Reserved]

(b) Under section § 498.102(b), the Office of the Inspector General may impose a penalty of not more than $5,000 for each violation resulting from the misuse of Social Security Administration program words, letters, symbols, or emblems relating to printed media, and a penalty of not more than $25,000 in the case of such misuse related to a broadcast or telecast.

(c) For purposes of paragraph (b) of this section, a violation is defined as—

(1) In the case of a direct mailing solicitation or advertisement, each separate piece of mail which contains one or more program words, letters, symbols, or emblems related to a determination under § 498.102(b); and

(2) In the case of a broadcast or telecast, each airing of a single commercial or solicitation related to a determination under § 498.102(b).

§ 498.104 [Reserved]

§ 498.105 [Reserved]

§ 498.106 Determinations regarding the amount or scope of penalties.

(a) [Reserved]

(b) In determining the amount of any penalty in accordance with § 498.103(b), the Office of the Inspector General will take into account—

(1) The nature and objective of the advertisement, solicitation, or other communication, and the circumstances under which they were presented;

(2) The frequency and scope of the violation, and whether a specific segment of the population was targeted;

(3) The prior history of the individual, organization, or entity in their willingness or refusal to comply with informal requests to correct violations;

(4) The history of prior offenses of the individual, organization, or entity in their misuse of program words, letters, symbols, and emblems;

(5) The financial condition of the individual or entity; and

(6) Such other matters as justice may require.

(c) In cases brought under section 1140 of the Social Security Act, the use of a disclaimer of affiliation with the United States Government, the Social Security Administration or its programs will not be considered as a mitigating factor in determining the amount of a penalty in accordance with § 498.106.

§ 498.107 [Reserved]

§ 498.108 Penalties not exclusive.

Penalties imposed under this part are in addition to any other penalties prescribed by law.

§ 498.109 Notice of proposed determination.

(a) If the Office of the Inspector General seeks to impose a penalty, it will serve written notice of the intent to take such action. The notice will include:

(1) Reference to the statutory basis for the penalty;

(2) A description of the incident(s) with respect to which the penalty is proposed;

(3) The amount of the proposed penalty;

(4) Any circumstances described in § 498.106 that were considered when determining the amount of the proposed penalty; and

(5) Instructions for responding to the notice, including—

(i) A specific statement of respondent's right to a hearing, and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty without right of appeal.

(b) Any person upon whom the Office of the Inspector General intends the imposition of a penalty may request a hearing on such proposed penalty.

(c) If the respondent fails to exercise the respondent's right to a hearing, within the time permitted under this section, any penalty becomes final.

§ 498.110 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 498.109, the Office of the Inspector General may seek the proposed penalty, or any less severe penalty. The Office of the Inspector General will notify the respondent by certified mail, return receipt requested, of any penalty that

has been imposed and of the means by which the respondent may satisfy the amount owed.

§§ 498.114–498.125 [Reserved]

§ 498.126 Settlement.

The Inspector General has exclusive authority to settle any issues or case, without the consent of the administrative law judge or the Commissioner, at any time prior to a final determination. Thereafter, the Commissioner or his or her designee has such exclusive authority.

§ 498.127 Judicial review.

Section 1140 of the Social Security Act authorizes judicial review of a penalty that has become final. Judicial review may be sought by a respondent only in regard to a penalty with respect to which the respondent requested a hearing under § 498.200ff of this part, unless the failure or neglect to urge such objection is excused by the court because of extraordinary circumstances.

§ 498.128 Collection of penalty.

(a) Once a determination has become final, collection of any penalty will be the responsibility of the Commissioner or his or her designee.

(b) [Reserved]

(c) In cases brought under section 1140 of the Social Security Act, a penalty imposed under this part may be compromised by the Commissioner or his or her designee and may be recovered in a civil action brought in the United States district court for the district where, as determined by the Commissioner, the:

(1) Violation referred to in § 498.102(b) occurred; or

(2) Respondent resides; or

(3) Respondent has its principal office; or

(4) Respondent may be found.

§ 498.129 [Reserved]

§ 498.132 Limitations.

The Office of the Inspector General may initiate a proceeding in accordance with § 498.109 of this part to determine whether to impose a penalty within 6 years from the date on which the violation was committed.

§ 498.200 [Reserved]

[FR Doc. 95–28308 Filed 11–24–95; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626 and 632

Job Training Partnership Act: Indian and Native American Programs Under Title IV–A

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor, in consultation with the Native American Employment and Training Council, is amending its regulations for the Indian and Native American program under title IV–A of the Job Training Partnership Act (JTPA or Act) by providing for waivers of regulatory requirements. These changes provide additional program flexibility to JTPA section 401 grantees, so that they may tailor their individual programs to better facilitate provision of services to those most in need of JTPA services, to enhance the quality of services provided and program outcomes in relation to labor market needs, to strengthen and better define fiscal and program accountability, to improve grantees' ability to provide services to their client populations by reducing or eliminating burdensome Federal requirements, and to foster a comprehensive and coherent system of human resource services.

DATES: *Effective date*: This interim final rule is effective on December 27, 1995.

Comments: Written comments are invited on this interim final rule. To be most useful in the development of the Final Rule, however, comments in response to this notice should be submitted in writing and received by January 26, 1996. However, such comments will be considered at any time up to the publication of the Final Rule.

ADDRESSES: Written comments shall be mailed to the Assistant Secretary for Employment and Training, Employment and Training Administration, Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Paul A. Mayrand, Director, Office of Special Targeted Programs. Commenters wishing acknowledgment of receipt of their comments shall submit them by certified mail, return receipt requested.

Comments received will be available for public inspection during normal business hours at the Division of Indian and Native American Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4641, Washington, DC 20210. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment, call (202) 219–5500 (VOICE) or (202) 326–2577 (TDD) (these are not toll-free numbers).

Copies of this interim final rule are available on computer disk or in a large-type edition which may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Dowd, Chief, Division of Indian and Native American Programs, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–8502 (VOICE) or (202) 326–2577 (TDD) (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration of the Department of Labor (Department or DOL) is amending its regulations at 20 CFR part 632 for Indian and Native American employment and training programs to implement a general waiver provision similar to the one appearing in the JTPA title II–A regulations at 20 CFR 627.201. In the absence of other revisions in the section 401 program regulations, this waiver provision will allow individual section 401 grantees the same latitude as the States to request waivers to current program regulations which they feel inhibit or obstruct their ability to provide employment and training services to their client populations.

Regulatory Certifications

This interim final rule is designed to allow individual JTPA section 401 grantees the flexibility to structure their job training programs to better meet the needs of their constituents. It does not fundamentally change the delivery system for providing services under JTPA title IV–A. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12866, 58 FR 51735, October 4, 1993.

This rule was not preceded by a proposed rule and is not, therefore, a rule under the Regulatory Flexibility Act. Nevertheless, the Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that, pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), this interim final rule would not have a significant economic impact on

a substantial number of small entities. No significant economic impact would be imposed on such entities by the interim final rule.

The Department has decided that it is in the best interests of the grantees to enact this interim final rule as quickly as possible. The Department intends to publish in the near future proposed and final regulations to implement the 1992 amendments to JTPA. It is likely, however, that final regulations will not be published in time to be implemented for the next program cycle. This interim final rule will permit grantees to make meaningful plans for the next program cycle. In the past, grantees have consistently sought this waiver provision. Members of the Council unanimously support this regulatory waiver capability as being in the best interests of the section 401 grantees. There are no mandatory requirements imposed on section 401 grantees as a result of this interim final rule. The decision to request or not request a specific waiver is up to the individual grantee, and will be considered by the Department on an individual basis. General input from the grantee community at large is strongly in favor of this interim final rule, because it will enable grantees to seek, and the Department to grant, relief from regulations which are currently not subject to waiver of any kind. It is broadly construed as being of benefit to the government and to all section 401 grantees.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.251, ''Native American Employment and Training Programs''.

Paperwork Reduction

This interim final rule contains no new collection of information requirements.

List of Subjects

20 CFR Part 626

Grant programs—labor, Manpower training programs.

20 CFR Part 632

Grant programs—Indians,—Grant programs—labor, Indians Manpower training programs, Youth.

Interim Final Rule

Accordingly, 20 CFR Chapter V is amended as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

1. The authority citation for Part 626 is revised to read as follows:

Authority: 29 U.S.C. 1579(a).

2. In § 626.4, the consolidated table of contents is amended by adding a section heading for 632.70 under Part 632 to read as follows:

§ 626.4 Table of contents for the Job Training Partnership Act regulations.

* * * * *

PART 632—INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

* * * * *

Subpart E—Program Design and Management

632.70 Waiver of regulations under Parts 632 and 636.

* * * * *

3. The authority citation for Part 632 is revised to read as follows:

Authority: 29 U.S.C. 1579(a).

4. Subpart E of Part 632 is amended by adding a new § 632.70 to read as follows:

§ 632.70 Waiver of regulations under Parts 632 and 636.

(a) A Native American section 401 grantee may request, and the Assistant Secretary of Labor for Employment and Training may grant, a waiver of specific provisions of 20 CFR Parts 632 and 636, or of any applicable administrative issuance, to the extent that such request is consistent with the provision of the Act.

(b)(1) In requesting a waiver under this section, the Native American section 401 grantee shall demonstrate how it will enhance the provision of services or outcomes to participants, which may include, but are not limited to, the following purposes: improving the targeting of services to the hard-to-serve; increasing the level of basic and occupational skills training provided by the JTPA program; contributing to the provisions of academic enrichment services to youth; promoting coordination of JTPA programs with other human resources programs; or substantially improving the job placement outcomes of the JTPA program.

(2) The request shall describe the regulatory requirements to be waived and demonstrate how such requirements impede the enhancement of the services and outcomes described in paragraph (b)(1) of this section.

(3) The waiver request shall indicate how the grantee will modify its planning documents as a result of the waiver.

(c) A waiver shall not be granted for:

(1) Any statutory requirement;

(2) The formula for allocation of funds;

(3) Eligibility requirements for services as provided in this part;

(4) Requirements for public health or safety, labor standards, civil rights, occupational safety or health, or environmental protection; or

(5) Prohibitions or restrictions relating to construction of buildings or facilities.

(d) Waivers granted shall be effective for no more than four years from the date the waiver is granted.

Signed at Washington, DC, this 13th day of November 1995.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 95–28434 Filed 11–24–95; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 442

[Docket No. 95N–0186]

Antibiotic Drugs; Cefpodoxime Proxetil, Cefpodoxime Proxetil Tablets, and Cefpodoxime Proxetil Granules for Oral Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to include accepted standards for a new antibiotic drug, cefpodoxime proxetil, and its use in two dosage forms, cefpodoxime proxetil tablets and cefpodoxime proxetil granules for oral suspension. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective December 27, 1995; written comments, notice of participation, and request for a hearing by December 27, 1995; data, information, and analyses to justify a hearing by January 26, 1996.

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: James Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6714.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, cefpodoxime proxetil, and its use in two dosage forms, cefpodoxime proxetil tablets and cefpodoxime proxetil granules for oral suspension. The agency has concluded that the data supplied by the manufacturer concerning these antibiotic drugs are adequate to establish their safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR parts 430, 436, and 442 to include accepted standards for these products.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because, when effective, it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, is effective December 27, 1995. However, interested persons may, on or before December 27, 1995, submit written comments to the Dockets Management Branch (address above). 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 Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before December 27, 1995, a written notice of participation and request for a hearing, and (2) on or before January 26, 1996, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Parts 436 and 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. The authority citation for 21 CFR part 430 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 357, 371); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262).

2. Section 430.4 is amended by adding new paragraph (a)(70) to read as follows:

§ 430.4 Definitions of antibiotic substances.

(a) * * *

(70) *Cefpodoxime proxetil.* Cefpodoxime proxetil is an antibiotic substance having the chemical structure described by the following name: (±)-1-Hydroxyethyl(+)-(6*R*,7*R*)-7-[2-(2-amino-4-thiazolyl)glyoxylamido]-3-(methoxymethyl)-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylate,7[2]-(*Z*)-(*O*-methyloxime), isopropyl carbonate (ester).

* * * * *

3. Section 430.5 is amended by adding new paragraphs (a)(105) and (b)(107) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(105) *Cefpodoxime proxetil.* The term ''cefpodoxime proxetil master standard'' means a specific lot of the (R) isomer of cefpodoxime proxetil that is designated by the Commissioner as the standard of comparison in determining the potency of the cefpodoxime proxetil working standard.

(b) * * *

(107) *Cefpodoxime proxetil.* The term ''cefpodoxime proxetil working standard'' means a specific lot of a homogeneous preparation of cefpodoxime proxetil.

4. Section 430.6 is amended by adding new paragraph (b)(107) to read as follows:

§ 430.6 Definitions of the terms ''unit'' and ''microgram'' as applied to antibiotic substances.

* * * * *

(b) * * *

(107) *Cefpodoxime proxetil.* The term ''microgram'' applied to cefpodoxime proxetil means the cefpodoxime (potency) contained in 1.304 micrograms of the cefpodoxime proxetil master standard when dried.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

5. The authority citation for 21 CFR part 436 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

6. Section 436.215 is amended by alphabetically adding a new entry to the table in paragraph (b) and by adding new paragraph (c)(19) to read as follows:

§ 436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Rotation rate[1]	Sampling times(s)	Apparatus
* * *	*	*	*	*
Cefpodoxime proxetil tablets	900 mL pH 3.0 glycine buffer	75	30 min	2
* * *	*	*	*	*

[1] Rotation rate of basket or paddle stirring element (revolutions per minute).

(c) * * *

(19) *Cefpodoxime proxetil*—(i) *Dissolution fluid: 0.04 molar glycine buffer, pH 3.0*—(A) *Stock solution.* Dissolve 54.5 grams of glycine (aminoacetic acid) and 42.6 grams of sodium chloride in about 500 milliliters of deionized water in a 1-liter volumetric flask. Add cautiously, and with swirling, 14.2 milliliters of concentrated hydrochloric acid. Cool to room temperature. Dilute to volume with deionized water and mix. Check the pH of the solution obtained by diluting 50 milliliters of the stock solution to 900 milliliters with deionized water. The pH should be 3.0±0.1. If necessary, adjust the pH of the stock solution with 50 percent sodium hydroxide or concentrated hydrochloric acid. Recheck that the pH of the working solution is 3.0±0.1.

(B) *Working solution.* Dilute 50 milliliters of stock solution to 900 milliliters with deionized water.

(ii) *Preparation of the working standard solutions.* Accurately weigh approximately 28 milligrams for the 100-milligram tablets and 56 milligrams for the 200-milligram tablets of the cefpodoxime proxetil working standard and dissolve in 10 milliliters of methanol. Dilute to 200 milliliters with dissolution fluid. Prepare fresh daily.

(iii) *Sample solutions.* Filter the sample solutions through a 0.45-micron filter before use. Use the sample solution as it is removed from the dissolution vessel without further dilution.

(iv) *Procedure.* Using a suitable spectrophotometer and water as the blank, determine the absorbance of each standard and sample solution at the absorbance peak at approximately 259 nanometers. Determine the exact position of the absorption peak for the particular instrument used.

(v) *Calculations.* Determine the percent of label dissolved as follows:

Percent dissolved = (A_{sam}/A_{std}) X (C_s/L) X V X P X $F1$

where:

A_{sam} = Absorbance of the sample at 259 nanometers;

A_{std} = Absorbance of the working standard solution at 259 nanometers;

C_s = Concentration of the working standard preparation in milligrams per milliliter;

L = Tablet strength, in milligrams per tablet;

P = Purity of the reference standard in percent;

V = Volume of dissolution fluid used in milliliters (900); and

$F1$ = 0.7666 (conversion factor to free acid equivalents).

PART 442—CEPHA ANTIBIOTIC DRUGS

7. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

8. New § 442.54 is added to subpart A to read as follows:

§ 442.54 Cefpodoxime proxetil.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefpodoxime proxetil is (±)-1-hydroxyethyl(+)-(6*R*,7*R*)-7-[2-(2-amino-4-thiazolyl)glyoxylamido]-3-(methoxymethyl)-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylate,7²-(*Z*)-(*O*-methyloxime), isopropyl carbonate (ester). It is so purified and dried that:

(i) Its potency is not less than 690 micrograms and not more than 804 micrograms of cefpodoxime activity per milligram, on an anhydrous basis.

(ii) The ratio of its R-epimer to total cefpodoxime is not less than 0.5 and not more than 0.6.

(iii) Its moisture content is not more than 3 percent.

(iv) It gives a positive identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for cefpodoxime potency, isomer ratio, moisture, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.216 of this chapter, using a suitable thermostatted column heating mechanism to maintain a column temperature of 40 °C, an ultraviolet detection system operating at a wavelength of 254 nanometers, a 15 centimeter X 4.6 millimeter (i.d.) column packed with microparticulate (5 micrometers in diameter) reversed phase packing material such as octadecyl silane bonded to silicas, a flow rate of 0.8 milliliter per minute, and a known injection volume of 2 microliters. The retention time for the S-epimer is approximately 22 minutes and the retention time for R-epimer is approximately 28 minutes. The internal standard (propylparaben) has a retention time of 34 minutes. Mobile phase, dilution solvent, resolution solution, internal standard solution, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Mobile phase.* The mobile phase consists of 420 milliliters of methanol, 580 milliliters of deionized water, and 230 milligrams of *L*-histidine hydrochloride. The pH is adjusted to 2.5±0.1 using 2*N* sulfuric acid. The mobile phase must be at room temperature for a correct pH measurement. The methanol concentration may be adjusted to achieve comparable retention times from column to column. Increasing methanol reduces retention times. Filter the mobile phase through a suitable filter capable of removing particulate matter 0.5 micron in diameter and degas it just before its introduction into the chromatograph.

(ii) *Dilution solvent.* Prepare a solvent for dilution by thoroughly mixing 495 milliliters of deionized water, 495 milliliters of acetonitrile, and 10 milliliters of acetic acid in an appropriate container.

(iii) *Resolution solution.* Prepare a 1 milligram per milliliter solution of any bulk containing ANTI–A in dilution solvent. Use this solution to determine the resolution between ANTI–A and the

later-eluting drug epimer (R-epimer). Alternately, the resolution factor can be determined between the R and S isomers.

(iv) *Internal standard solution.* Prepare a solution of propylparaben in dilution solvent at a concentration of 10 milligrams per milliliter.

(v) *Preparation of working standard solutions.* Accurately weigh approximately 42 milligrams of the cefpodoxime proxetil working reference standard add 3 milliliters of internal standard solution and 25 milliliters of dilution solvent. The standard solution is stable for at least 48 hours. Refrigeration is not recommended.

(vi) *Sample solution.* Accurately weigh approximately 42 milligrams of the sample, add 3 milliliters of internal standard and 25 milliliters of dilution solvent. The sample solution is stable for at least 48 hours. Refrigeration is not recommended.

(vii) *System suitability requirements*—(A) *Asymmetry factor.*The asymmetry factor (A_s) is satisfactory if it is not less than 0.8 and not more than 1.1 for the R-epimer of cefpodoxime peak.

(B) *Efficiency of the column.* The absolute efficiency (h_r) is satisfactory if it is not more than 5 for the R-epimer peak.

(C) *Resolution factor.* The resolution factor (R) between the peak for ANTI–A and the peak for the R-epimer is satisfactory if it is not less than 1.3. Alternately, the resolution factor (R) between the peak for the R-epimer and the peak for the S-epimer of cefpodoxime is not less than 11.

(D) *Coefficient of variation (Relative standard deviation).* The coefficient of variation (S_R in percent of 5 replicate injections) is satisfactory if it is not more than 2 percent.

(E) *Capacity factor (k').* The capacity factor (k') for the R-epimer of cefpodoxime is satisfactory if it is not less than 10.4 and not more than 15.6.

(F) If the system suitability parameters in this paragraph (b)(1)(iv) have been met, then proceed as described in § 436.216(b) of this chapter.

(viii) *Calculations.* Calculate the micrograms of cefpodoxime proxetil per milligram of sample on an anhydrous basis as follows:

$$\text{Micrograms of cefpodoxime proxetil per milligram} = \frac{R_u \times P_s \times 100}{R_s \times C_u \times (100-m)}$$

where:

R_u = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak response in the sample solution;

R_s = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak response in the working standard solution;

P_s = Cefpodoxime proxetil activity of the working standard solution in micrograms per milliliter;

C_u = Milligrams of sample per milliliter of sample solution; and

m = Percent moisture content of the sample.

(2) *Isomer ratio.* Using the procedure described in paragraph (b)(1) of this section, calculate the ratio of the R-epimer (Ab) to the sum of the S-epimer and R-epimer (Aa and Ab), by the equation

Isomer Ratio = Ab/(Aa + Ab)

where:

Aa = Area of the early eluting S-epimer peak; and

Ab = Area of the late eluting R-epimer peak.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter, except use 30 milliliters of solvent C instead of 20 milliliters of solvent A.

(4) *Identity.* Proceed as directed in § 436.211 of this chapter, using the mineral oil mull prepared as described in paragraph (b)(2) of that section.

9. New §§ 442.154, 442.154a, and 442.154b are added to subpart B to read as follows:

§ 442.154 Cefpodoxime proxetil oral dosage forms.

§ 442.154a Cefpodoxime proxetil tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefpodoxime proxetil tablets are composed of cefpodoxime proxetil and one or more suitable and harmless diluents, binders, lubricants, colorings, and coating substances. Each tablet contains cefpodoxime proxetil equivalent to either 100 milligrams or 200 milligrams of cefpodoxime. Its cefpodoxime proxetil content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of cefpodoxime that it is represented to contain. Its loss on drying is not more than 5 percent. It passes the dissolution test. It passes the identity test. The cefpodoxime proxetil used conforms to the standards prescribed by § 442.54(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefpodoxime proxetil used in making the batch for potency, isomer ratio, moisture, and identity.

(B) The batch for content, loss on drying, dissolution, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The cefpodoxime proxetil used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 100 tablets.

(b) *Tests and methods of assay*—(1) *Cefpodoxime content.* Proceed as directed in § 442.54(b)(1), preparing the sample solution and calculating the cefpodoxime content as follows:

(i) *Preparation of sample solution.* Obtain the average tablet weight of at least 20 tablets. Grind the tablets using a mortar and pestle. Weigh approximately 660 milligrams into a suitable container. Add 30 milliliters of internal standard solution. Shake for 30 minutes using a horizontal platform shaker or equivalent. Centrifuge for about 10 minutes at 3,000 revolutions per minute until the particulate matter has settled. Withdraw a 1 milliliter aliquot of the supernatant and dilute with 9 milliliters of dilution solvent. The sample solutions are stable for at least 48 hours. Refrigeration is not recommended.

(ii) *Calculations.* Calculate the cefpodoxime content as follows:

$$\text{Milligrams of cefpodoxime per tablet} = (R_{sam}/R_{std}) \times (W_{std}/W_{sam}) \times (F_1/F_3) \times F_2 \times F_4 \times P$$

where:
R_{sam} = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak area in the sample preparation;
R_{std} = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak area in the standard preparation;
W_{std} = Weight of cefpodoxime proxetil reference standard, in milligrams;
W_{sam} = Weight of sample, in milligrams;
F_1 = Volume of internal standard used in the sample preparation, in milliliters;
F_2 = 0.766; The ratio of molecular weight for free-acid cefpodoxime over the molecular weight of cefpodoxime proxetil (427.46/557.61);
F_3 = Volume of internal standard used in the standard preparation, in milliliters;
F_4 = Average tablet weight, i.e., weight of tablets used in sample preparation divided by the number of tablets; and
P = Purity of the cefpodoxime proxetil reference standard, expressed as a decimal.

(2) *Loss on drying.* Proceed as directed in § 436.200(a) of this chapter, except dry the sample at a temperature of 80 °C and a pressure of 5 millimeters of mercury or less for 16 hours.

(3) *Dissolution test.* Proceed as directed in § 436.215 of this chapter. The quantity Q (the amount of cefpodoxime activity dissolved) is 70 percent within 30 minutes.

(4) *Identity.* Using the high-performance liquid chromatographic procedure described in paragraph (b)(1) of this section, the retention times for the peaks of the active ingredients must be within 2 percent of the retention times for the peaks of the corresponding reference standards.

§ 442.154b Cefpodoxime proxetil granules for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefpodoxime proxetil granules for oral suspension is cefpodoxime proxetil and one or more suitable and harmless preservatives, sweeteners, suspending agents, buffers, and flavorings. When constituted as directed in the labeling, each milliliter contains the equivalent of either 10 or 20 milligrams cefpodoxime activity. Its cefpodoxime proxetil content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of milligrams of cefpodoxime that it is represented to contain. Its loss on drying is not more than 0.5 percent. When constituted as described in the labeling, the pH of the suspension is not less than 4 and not more than 5.5. It passes the identity test. The cefpodoxime proxetil used conforms to the standards prescribed by § 442.54(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The cefpodoxime proxetil used in making the batch for potency, isomer ratio, moisture, and identity.

(B) The batch for content, loss on drying, pH, and identity.

(ii) Samples, if required by the Director, Center for Drug Evaluation and Research:

(A) The cefpodoxime proxetil used in making the batch: 10 packages, each containing approximately 500 milligrams.

(B) The batch: A minimum of 10 intermediate containers.

(b) *Tests and methods of assay*—(1) *Cefpodoxime content.* Proceed as directed in § 442.54(b)(1), preparing the sample solution and calculating the cefpodoxime content as follows:

(i) *Preparation of sample solution.* Reconstitute as directed in the labeling. Immediately before sampling the suspension, shake vigorously for several seconds. Into a suitable container, accurately weigh out 6 grams of the 50 milligrams per 5 milliliters suspension, or 3 grams of the 100 milligrams per 5 milliliters suspension. Add 5 milliliters of internal standard solution and 25 milliliters of dilution solvent. Shake for 30 minutes using a horizontal platform shaker or equivalent. Centrifuge for about 10 minutes at 3,000 revolutions per minute until the particulate matter has settled. Withdraw a 1 milliliter aliquot of the supernatant and dilute with 1 milliliter of dilution solvent. The sample solutions are stable for at least 48 hours. Refrigeration is not recommended.

(ii) *Calculations.* Calculate the cefpodoxime content as follows:

$$\text{Milligrams of cefpodoxime per 5 milliliters of suspension} = (R_{sam}/R_{std}) \times (W_{std}/W_{sam}) \times (F_1/F_3) \times (F_2/F_4) \times F_5 \times P$$

where:
R_{sam} = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak area in the sample preparation;
R_{std} = Ratio of cefpodoxime proxetil peaks area (sum of both epimers) to the internal standard peak area in the standard preparation;
W_{std} = Weight of cefpodoxime proxetil reference standard, in milligrams;
W_{sam} = Weight of sample, in grams;
F_1 = Volume of internal standard used in the sample; preparation, in milliliters;
F_2 = 0.766; The ratio of molecular weight for free-acid cefpodoxime over the molecular weight of cefpodoxime proxetil (427.46/557.61);
F_3 = Volume of internal standard used in the standard preparation, in milliliters;
F_4 = 0.2; Factor to convert to 5 milliliters;
F_5 = Specific gravity of suspension for milligram per 5 milliliter calculated on the air-free basis (specific gravity is determined on a sample of suspension that has been shaken gently on a platform shaker under vacuum for 2 hours); and
P = Purity of the cefpodoxime proxetil reference standard, expressed as a decimal.

(2) *Loss on drying.* Proceed as directed in § 436.200(a) of this chapter, except dry the sample at a temperature of 80 °C and a pressure of 5 millimeters of mercury or less for 16 hours.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the drug constituted as directed in the labeling.

(4) *Identity.* Using the high-performance liquid chromatographic procedure described in paragraph (b)(1) of this section, the retention times for the peaks of the active ingredients must be within 2 percent of the retention times for the peaks of the corresponding reference standards.

Dated: November 13, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–28893 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8600]

RIN 1545–AE86

Definition of an S Corporation; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations [TD 8600] which were published in the Federal Register for Friday, July 21, 1995 (60 FR 37578). The final regulations relate to the definition of an *S corporation.*

EFFECTIVE DATE: July 21, 1995.

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

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1361 of the Internal Revenue Code.

Need for Correction

As published, TD 8600 contains a typographical error that is in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations which is the subject of FR Doc. 95–17914, is corrected as follows:

§ 1.1361–1 [Corrected]

On page 37587, column 1, § 1.1361–1 (which was corrected at 60 FR 49976, Sept. 27, 1995), paragraph (k)(1), paragraph (ii) of *Example 1.*, in the last sentence of the paragraph, the date ''July 27, 1997'' is corrected to read ''July 28, 1997''.

Cynthia E. Grigsby,

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

[FR Doc. 95–28801 Filed 11–24–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

[SPATS No. KS–016–FOR]

Kansas Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Kansas regulatory program (hereinafter referred to as the ''Kansas program'') under the Surface Mining Control and Reclamation Act of 1977. Kansas proposed revisions to its approved revegetation success guidelines pertaining to an additional measurement technique that could be used to determine woody stem density. The amendment is intended to improve operational efficiency.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois, 62002, Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 21, 1981, Federal Register (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.10, 916.12 and 916.15.

II. Submission of the Proposed Amendment

By letter dated August 9, 1995 (Administrative Record No. KS–600), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment at its own initiative to improve its program efficiency. Kansas proposes to modify its requirements for determining the productivity success of trees and shrubs by amending its approved revegetation success guidelines entitled ''Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success'' to include an alternative sampling method for determining woody stem density.

OSM announced receipt of the proposed amendment in the September 12, 1995, Federal Register (60 FR 47314), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. KS–603). The public comment period ended on October 12, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Woody Stem Density

Kansas proposes to amend its revegetation success guidelines by adding an alternative method for measurement of woody stem density. This would apply to any land use where trees or shrubs would be required to be planted as part of the approved reclamation and revegetation plan. The approved guidelines currently only allow for a 100 percent count of trees and shrubs in the proposed release area. The proposed amendment would still require that 100 percent counts are necessary when the reclamation plan calls for less than 300 stems per acre and less than 10 acres. When the reclamation plan calls for more than 300 stems per acre or the release area is larger than 10 acres, the permittee has the option of either doing a 100 percent count or collecting a statistically valid sample utilizing randomly selected 1/50th acre circular plots.

The Kansas program regulations concerning statistically valid sampling methods for measuring revegetation success are found at Kansas Administrative Regulation (KAR) 47–9–1(c)(42) and adopt by reference 30 CFR 816.116, as in effect on July 1, 1990.

These regulations are essentially identical to the counterpart Federal regulations. Kansas is adding an alternative measurement technique for the determination of woody stem density for any land use where the approved reclamation plan would require the planting of trees or shrubs. The method must meet the State and Federal requirement that this measurement technique be a statistically valid sampling technique as required at 30 CFR 816/817.116(a). The Director finds that by requiring random sampling where sample adequacy is established and utilizing a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error), the proposed method is no less effective than the Federal regulations at 30 CFR 816/817.116(a).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

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

The U.S. Department of the Interior, Fish and Wildlife Service, responded on September 12, 1995, and provided its concurrence that the implementation of the proposed revision should adequately ensure successful revegetation of reclaimed areas and had no objection to the proposal (Administrative Record No. 602). The U.S. Department of Agriculture, Natural Resources Conservation Service, responded on September 25, 1995, but did not offer any substantive comments (Administrative Record No. KS–604).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Kansas proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to § 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. KS–605). EPA did not respond to the request.

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

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. Since the proposed amendment would not have any effect on historic properties, OSM did not solicit comment from the SHPO or ACHP.

V. Director's Decision

Based on the above finding, the Director approves Kansas' proposed amendment as submitted on August 9, 1995, concerning the Kansas alternative method for measurement of woody stem density.

The Director approves the revision as proposed by Kansas with the provision that it is fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 916, codifying decisions concerning the Kansas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

VII. List of Subjects in 30 CFR 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 13, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

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

2. Section 916.15 is amended by adding paragraph (p) to read as follows:

§ 916.15 Approval of regulatory program amendments.

* * * * *

(p) The revision to the Kansas Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success, concerning the alternative for measuring woody stem density as submitted to OSM on August 9, 1995, is approved effective November 27, 1995.

[FR Doc. 95–28865 Filed 11–24–95; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS COLE (DDG 67) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 26, 1995.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS COLE (DDG 67) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Four of § 706.2 is amended by:

a. Adding the following entry to Paragraph 15:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS COLE	DDG 67	1.90 meters.

b. Adding the following entry to Paragraph 16:

Vessel	Number	Obstruction angle relative ship's headings
USS COLE	DDG 67	101.83 thru 112.50°.

3. Table Five of § 706.2 is amended by adding the following entry:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS COLE	DDG 67	X	X	X	20.4

Dated: October 26, 1995.

Approved: _____

R. R. Pixa,

CAPT, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–28799 Filed 11–24–95; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–5333–4]

RIN 2060–AA35, RIN 2060–AB55

Standards of Performance for New Stationary Sources: Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations and Reactor Processes; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendment.

SUMMARY: This document contains amendments to the standards of performance for new, modified, and reconstructed distillation operations in the synthetic organic chemical manufacturing industry (SOCMI) (Subpart NNN) published on June 29, 1990, and for new, modified, and reconstructed reactor processes in the synthetic organic chemical manufacturing industry (SOCMI) (Subpart RRR) published on August 31, 1993. Amendments are made to the spelling of certain chemical names, the CAS numbers for certain chemicals, and some cross-reference drafting errors. A clarifying sentence is also being added to certain paragraphs to avoid inadvertent duplication of report requirements.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: For further information about this correction contact Mr. Warren Johnson, (919) 541–5124, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background

This document amends §§ 60.665 and 60.667 of Subpart NNN, and §§ 60.700, 60.704, 60.705 and 60.707 of Subpart RRR of 40 CFR Part 60. These sections deal with the applicability, test methods and procedures, recordkeeping and reporting requirements for the standards of performance for new, modified, and reconstructed distillation operations (Subpart NNN) and reactor processes (Subpart RRR) in the SOCMI industry.

As published, the final regulations contain spelling and CAS number errors for certain chemicals listed in § 60.667 Chemicals affected by Subpart NNN, and in § 60.667 Chemicals affected by Subpart RRR, respectively. This document serves to amend these errors.

As published, Subpart RRR, § 60.700 Applicability and designation of affected facility, contains some inadvertent cross-referencing errors which cause confusion in determining what is to be reported semiannually regarding exemptions for total resource effectiveness (TRE) greater than 8, production units with total design capacity of less than 1,100 tons per year, and facilities with low vent stream flow rates (0.011 scm/min). This document serves to amend these errors to language and meaning originally intended by the regulation.

As published on August 31, 1993 (58 FR 45948), Subpart RRR, § 60.704 Test methods and procedures, contains a calculation error in the TRE equation and some inadvertent cross-referencing errors which cause confusion in determining TRE and compliance procedures. The calculation error occurs in § 60.704(e)(1), which provides the equation for calculating the TRE index value. In this equation the first ''0.88'' is intended to be superscript, as it correctly appeared in the proposed rulemaking in the Federal Register, June 29, 1990 (55 FR 26945). The cross-referencing errors occur in § 60.704(f)(1) where notification is required for a recalculated TRE index value and § 60.704(h)(3) where method 18 is used to qualify for the total organic compound (TOC) low concentration exclusion. This document serves to amend these errors to language and meaning originally intended by the regulation.

As published, the reporting and recordkeeping requirements of Subparts NNN and RRR, in §§ 60.665 and 60.705, contain language that unintentionally infers duplication of process change reporting requirements. To eliminate this duplication, a sentence is being added to each of the §§ 60.665(l) (5) and (6) in Subpart NNN, and §§ 60.705(l) (4), (5), and (8) in Subpart RRR to clarify that these reports may be submitted either in conjunction with semiannual reports or as a single separate report. In addition, § 60.705(l)(1), which is a missing cross-reference causing confusion in determining appropriate reporting requirements for monitored exceedances, is also being amended to be consistent with the proposed rulemaking in the Federal Register, June 29, 1990 (55 FR 26978). This document serves to amend the text to language and meaning originally intended by the regulation.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Metallic minerals, Nonmetallic minerals, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, part 60 of chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

Subpart NNN—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations

2. In § 60.665 paragraphs (l)(5) and (l)(6) are both amended by adding a new sentence after the second sentence in each paragraph to read as follows:

§ 60.665 Reporting and recordkeeping requirements.

* * * * *

(l) * * *

(5) * * * These reports may be submitted either in conjunction with semiannual reports or as a single separate report. * * *

(6) * * * These reports may be submitted either in conjunction with semiannual reports or as a single separate report. * * *

* * * * *

§ 60.667 [Amended]

3. Section 60.667 is amended in the table as follows:

a. By removing ''6-Ethyl-1,2,3,4-tetrahydro-9,10-antracenedione'' from the first column and by adding ''6-Ethyl-1,2,3,4-tetrahydro-9,10-anthracenedione'' in its place.

b. By removing ''Isobytyraldehyde'' from the first column and by adding ''Isobutyraldehyde'' in its place.

c. By revising the CAS number in the second column for Nonyl alcohol to read ''143–08–8''.

Subpart RRR—Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

§ 60.700 [Amended]

4. Section 60.700 is amended as follows:

a. In paragraph (c)(2) by revising ''§ 60.705 (g), (l) and (t)'' to read ''§ 60.705 (g), (l)(1), (l)(6) and (t)''.

b. In paragraph (c)(3) by revising ''paragraphs (i), (l)(6) and (n) of § 60.705'' to read ''§ 60.705 (i), (l)(5) and (n)''.

c. In paragraph (c)(4) by revising ''paragraphs (h), (l)(5), and (o) of § 60.705'' to read ''§ 60.705 (h), (l)(4) and (o)''.

5. Section 60.704 is amended as follows:

a. In paragraph (e)(1) introductory text by revising the equation to read as follows:

§ 60.704 Test methods and procedures.

* * * * *

(e) * * *

(1) * * *

$$TRE = \frac{1}{E_{TOC}}\left[a + b\left(Q_s\right)^{0.88} + c\left(Q_s\right) + d\left(Q_s\right)\left(H_T\right) + e\left(Q_s\right)^{0.88}\left(H_T\right)^{0.88} + f\left(Y_s\right)^{0.5}\right]$$

* * * * *

b. In paragraph (f)(1) by revising ''§ 60.702(a)'' to read ''§ 60.702 (a) or (b)''.

c. In paragraph (h)(3) by revising ''§ 60.704(b)(4) (i) and (vii)'' to read ''§ 60.704(b)(4) (i) and (iv)''.

§ 60.705 [Amended]

6. Section 60.705 is amended in paragraph (l)(1) by revising ''§ 60.705 (c) and (g)'' to read ''§ 60.705 (c), (f) and (g)''.

7. In Section 60.705 paragraphs (l)(4), (l)(5) and (l)(8) are all amended by adding a new sentence after the second sentence in each paragraph to read as follows:

§ 60.705 Reporting and recordkeeping requirements.

* * * * *

(l) * * *

(4) * * * These reports may be submitted either in conjunction with semiannual reports or as a single separate report. * * *

(5) * * * These reports may be submitted either in conjunction with semiannual reports or as a single separate report. * * *

* * * * *

(8) * * * These reports may be submitted either in conjunction with semiannual reports or as a single separate report. * * *

* * * * *

§ 60.707 [Amended]

8. Section 60.707 is amended in the table as follows:

a. By removing ''6-Ethyl-1,2,3,4-tetrahydro-9,10-antracenedione'' from the first column and by adding ''6-Ethyl-1,2,3,4-tetrahydro-9,10-anthracenedione'' in its place.

b. By removing ''Isobytyraldehyde'' from the first column and by adding ''Isobutyraldehyde'' in its place.

c. By revising the CAS number in the second column for Butylbenzyl phthalate to read ''85–68–7''.

d. By revising the CAS number in the second column for Nonyl alcohol to read ''143–08–8''.

[FR Doc. 95–28381 Filed 11–24–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5333–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of Woodbury Chemical Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IV announces the deletion of the Woodbury Chemical Site, Princeton, Florida, from the National Priorities List (NPL). The NPL constitutes Appendix B which is 40 CFR part 300 the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

EFFECTIVE DATE: November 27, 1995.

ADDRESSES: Joe Franzmathes, Director, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365. Comprehensive information on this Site is available through the Region IV public docket, which is available for viewing at the Woodbury Chemical information repositories at two locations. Locations and phone numbers are: U.S EPA Record Center, 345 Courtland Street N.E., Atlanta, Georgia 30365, (404) 347–0506, and South Dade Regional Library, 10750 SW 211th Street, Cutler Ridge, Florida 33189, (305) 233–8140.

FOR FURTHER INFORMATION CONTACT: Joe Franzmathes, (404) 347–3454.

SUPPLEMENTARY INFORMATION: The Woodbury Chemical Site in Princeton, Florida, is being deleted from the NPL.

A Notice of Intent to Delete for this site was published on August 21, 1995 (60 FR 43424). The closing date for comments on the Notice of Intent to Delete was September 20, 1995. EPA received no comments and therefore did not prepare a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 301.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 4, 1995.

Patrick M. Tobin,

Acting Regional Administrator, USEPA Region IV.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 is revised to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended under Florida by removing the Site ''Woodbury Chemical Co. (Princeton Plant)''.

[FR Doc. 95–28390 Filed 11–24–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991–AA81

Health Care Programs: Fraud and Abuse; Revisions to the Civil Money Penalty Provisions Relating to the Misuse of Certain Names, Symbols and Emblems

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: In accordance with amendments to section 1140 of the Social Security Act, resulting from the Social Security Independence and Program Improvements Act of 1994, this final rule makes a number of revisions to the civil money penalty authority regulations relating to the misuse of certain symbols, emblems and names. Among other revisions, this rule eliminates the annual cap on penalties, includes the words and letters of the Department and Medicaid under the prohibition, and redefines a violation with regard to mailings. In addition, this final rule serves to remove references to Social Security and the Social Security Administration (SSA) from the HHS/OIG penalty regulations. The penalty regulations addressing the misuse of certain words, letters, symbols and emblems for SSA and its programs are being set forth in a new part of the Code of Federal Regulations published elsewhere in this edition of the Federal Register.

EFFECTIVE DATE: These regulations are effective on November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, Office of Management and Policy, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

On August 28, 1991, the Department of Health and Human Services' (HHS') Office of Inspector General (OIG) published final rulemaking in the Federal Register that implemented new section 1140 of the Social Security Act (the Act), as established by section 428(a) of Public Law 100–360 (56 FR 42532). The rulemaking set forth final OIG regulations for imposing civil money penalties (CMPs) for the use—in advertising, solicitations or other communications—of certain words, letters, symbols and emblems associated with the Department's Social Security and Medicare programs in a manner that the user knows, or should know, would convey a false impression that (1) the communicated item was approved, endorsed or authorized by the Department or its programs; or (2) the responsible person or organization has some connection with, or authorization from, the Department or these programs.

Specifically, the rulemaking was designed to assist in protecting citizens from misrepresentations concerning the services offered and the programs administered by the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) by imposing CMPs against individuals and entities that make false use of—

- The words ''Social Security,'' ''Social Security Account,'' ''Social Security Administration,'' ''Social Security System,'' ''Medicare,'' and ''Health Care Financing Administration,'' or any combination or variation of such words;
- The letters ''SSA'' or ''HCFA,'' or any combination or variation of such letters; or
- Any symbols or emblems of SSA or HCFA, or any combination or variation of such symbols or emblems.

In accordance with section 1140 of the Act, the regulations established CMPs of up to $5,000 for each violation of this prohibition relating to printed media, and up to $25,000 per violation in the case of a misleading broadcast or telecast. In the case of a direct mailing solicitation, the regulations stated that each group mailing of an identical, non-personalized, generic letter or solicitation sent at the same time on the same day would be considered to be a single violation. Each unique or personalized letter or solicitation, such as with the individual's name and address appearing in the body of the advertisement or on the mailing envelope or covering would be treated as a separate and single violation. With respect to multiple violations consisting of substantially identical communications or productions, total penalties could not exceed $100,000 per year.

The regulations set forth six mitigating or aggravating factors to be used in determining the amount of penalty to be imposed with respect to a violation, including any efforts by the individual, entity or organization to include a clear, prominent and conspicuously-placed disclaimer of Government association on the mailing envelope, the first page, or in the beginning of the solicitation or offering.

II. Changes Resulting From Public Law 103–296

The passage and enactment of Public Law 103–296, the Social Security Independence and Program Improvements Act (SSIPIA) of 1994, has resulted in several refinements to the HHS/OIG penalty regulations that should be significant in their impact but present no apparent policy discretion in their implementation. However, as discussed below, section 312(a) of SSIPIA made one change to the statute regarding the reproduction, reprinting or distribution of official forms, applications or other publications that may require the exercise of policy discretion in its implementation and thus is not addressed in this final rule.

Social Security Administration as an Independent Agency

First and foremost, section 101 of SSIPIA established the Social Security Administration as an independent agency in the Executive Branch, with the duty to administer the old-age, survivors and disability insurance program under title II of the Act and the supplemental security income program under title XVI of the Act. In creating an independent SSA, Public Law 103–296 also established an independent Office of Inspector General within that agency, with separate and autonomous authority for levying certain CMPs. As a result, a newly-established 20 CFR part 498 has been developed by the SSA/OIG, and is being published elsewhere in this issue of the Federal Register, setting forth the basis for any new SSA/OIG penalty authorities, the mitigating and aggravating factors to be used in

assessing penalty amounts, and the due process and hearing and appeals mechanism to be utilized in the imposition of those CMP provisions. The direct effect of this action is the transfer of all references to CMPs for the misuse of the words, letters, symbols and emblems relating to SSA and its programs out of 42 CFR part 1003 and into the new 20 CFR part 498.

Amendments to Section 1140 of the Social Security Act

In addition, section 312 of SSIPIA amended section 1140 of the Act through several provisions designed to broaden the existing deterrents against misleading mailings and advertisements directly involving Social Security and the Department's health care programs. Among other changes, section 312 of SSIPIA: (1) broadened the list of prohibited words, symbols and acronyms subject to a violation; (2) revised the standard of knowledge for determining a violation; (3) exempted any State agency (or any instrumentality or political subdivision of the State) from the prohibited use of these words, letters, symbols or emblems where such use serves to identify these entities; (4) specifically defined a violation with regard to mailings; (5) eliminated the annual penalty cap; and (6) eliminated the use of a disclaimer as a factor in determining a violation under this provision. As indicated above, these changes and their effect on violations specifically involving SSA and its programs are being addressed in new and separate rulemaking by the SSA/OIG to be codified in 20 CFR part 498.

Section 312 of SSIPIA also amended section 1140 of the Act by indicating that no individual, organization or entity may, for a fee, reproduce, reprint or distribute any form, application or other publication of the Department unless prior authorization and approval is obtained for such activity from the Secretary. The prohibition of unauthorized reproduction, reprinting or distribution for a fee of certain official HHS and program documents goes beyond the scope of these regulations. While one option may be the placement of a written statement on certain forms, applications or other publications allowing for their reproduction, reprinting or distribution, we believe formalized policies and procedures addressing this new requirement must be developed through separate rulemaking prescribed by the Secretary. We will be working with the Department and its programs in the near future to develop proposed rulemaking and seek public comment on how best to implement this new authority.

III. Revisions to 42 CFR Part 1003

As a result of Public Law 103–296, we are amending the HHS/OIG civil money penalty regulations at 42 CFR part 1003 as follows:

- *References to SSA*—Current references in §§ 1003.100(b)(1)(v) and 1003.102(b)(7) to the words ''Social Security,'' ''Social Security Account,'' ''Social Security Administration,'' and ''Social Security System,'' and the letters ''SSA,'' are being deleted.
- *Expanded list of prohibited words and letters*—In addition to the words ''Health Care Financing Administration'' and ''Medicare,'' and the letters ''HCFA,'' we are amending § 1003.102(b)(7) to prohibit the misuse of the words ''Department of Health and Human Services,'' ''Health and Human Services,'' and ''Medicaid;'' the letters ''DHHS'' and ''HHS;'' and the symbols and emblems of the Department, including the Medicare card.
- *Conduct for determining a violation*—The current standard for determining a violation under this provision is that the individual, entity or organization ''knew, or should have known'' that their use of certain words, letters, symbols or emblems would convey the false impression that the advertisement or solicitation was authorized, approved or endorsed by the Department or HCFA. In accordance with the amendments to section 1140 of the Act, § 1003.102(b)(7) is being revised to further prohibit the inclusion of these designated words, letters, symbols and emblems where they are used in a manner that could be ''reasonably interpreted or construed as conveying'' a relationship with the Department or HCFA.
- *State agency exemptions*—We are further amending § 1003.102(b)(7) by adding a new paragraph stating that any State agency (or instrumentality or political subdivision of the State) will be exempt from the prohibited use of these words, letters, symbols and emblems if these items are used to identify the State agency, instrumentality or subdivision.
- *Definition of a mailing violation*—The current regulations at § 1003.103(d)(2)—that define each group mailing of an identical, non-personalized, generic letter or solicitation sent at the same date and time as a single violation—are being revised in accordance with the statute to indicate that each individual piece of mail or each individual solicitation in a mass mailing or distribution will now be viewed as an individual and independent violation.
- *Removal of annual cap on penalties*—Reference to the annual penalty cap of $100,000 for violations resulting from this provision, currently set forth in § 1003.103(d)(1), is being deleted in accordance with the statutory rescission.
- *Elimination of use of a disclaimer as a mitigating factor*—We are revising § 1003.106(a)(3) to indicate that the use of disclaimer of affiliation with the Government, the Department or its programs will no longer be considered as a mitigating factor in determining a violation and the amount of penalty under this provision.

In addition to these revisions resulting from Public Law 103–296, we are further revising § 1003.106(a)(3) to include the financial condition and degree of culpability of the individual, organization or entity as factors that the OIG will consider in determining the amount of any penalty in accordance with this violation. This technical revision is consistent with section 1128A(d)(2) of the Act, which was incorporated into section 1140, and was inadvertently omitted in the original rulemaking.

IV. The Handling of Dual Violations

The HHS/OIG and the SSA/OIG may make separate and independent determinations with regard to violations of section 1140 of the Act—and levy separate CMPs—against individuals, entities or organizations who make prohibited use of words, letters, symbols or emblems of *both* the Department and SSA in the same advertisement or solicitation.

V. Waiver of Proposed Rulemaking

In developing our regulations, we follow the notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures in this case. Specifically, this rulemaking comports and is consistent with the revised statutory authority set forth in section 1140 of the Act, with no issues of policy discretion. As a result, we believe that opportunity for prior comment is unnecessary and we are issuing these revised regulations as a final rule that will apply to all

pending and future cases under this authority.

VI. Regulatory Impact Statement

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with the provisions of Executive Order 12866 and determined that it does not meet the criteria for a significant regulatory action. As indicated above, the provisions contained in this final rulemaking set forth the revised authorities for levying CMPs against those individuals, entities and organizations that misuse specific Departmental and HCFA program words, letters, symbols and emblems. These revisions are as a result of statutory changes to section 1140 of the Social Security Act, and serve to clarify departmental policy with respect to the imposition of CMPs against those who violate the statute. We believe that the great majority of individuals, organizations and entities do not engage in such prohibited activities and practices discussed in these regulations. As a result, we believe that the aggregate economic impact of these revised regulations will be minimal, affecting only those limited few who may engage in prohibited behavior in violation of the statute. As such, this final rule should have no direct effect on the economy or on Federal or State expenditures.

Regulatory Flexibility Act

In addition, we generally prepare a regulatory flexibility analysis consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612) unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While some sanctions and penalties may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. In either case, we do not anticipate that a substantial number of small entities will be significantly affected by this revised rulemaking. Therefore, we have concluded, and the Secretary certifies, that a regulatory flexibility analysis is not required for this final rule.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

Accordingly, 42 CFR part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

1. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

2. Section 1003.100 is amended by republishing paragraph (b)(1) introductory text, and by revising paragraph (b)(1)(v) to read as follows:

§ 1003.100 Basis and purpose.

* * * * *

(b) *Purpose.* * * *

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

* * * * *

(v) Misuse certain Departmental and Medicare and Medicaid program words, letters, symbols or emblems;

* * * * *

3. Section 1003.102 is amended by republishing paragraph (b) introductory text, and revising paragraph (b)(7) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

* * * * *

(7) Has made use of the words, letters, symbols or emblems as defined in paragraph (b)(7)(i) of this section in such a manner that such person knew or should have known would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that an advertisement, solicitation or other item was authorized, approved or endorsed by the Department or HCFA, or that such person or organization has some connection with or authorization from the Department or HCFA. Civil money penalties—

(i) May be imposed, regardless of the use of a disclaimer of affiliation with the United States Government, the Department or its programs, for misuse of—

(A) The words ''Department of Health and Human Services,'' ''Health and Human Services,'' ''Health Care Financing Administration,'' ''Medicare,'' or ''Medicaid,'' or any other combination or variation of such words;

(B) The letters ''DHHS,'' ''HHS,'' or ''HCFA,'' or any other combination or variation of such letters; or

(C) A symbol or emblem of the Department or HCFA (including the design of, or a reasonable facsimile of the design of, the Medicare card, the check used for payment of benefits under title II, or envelopes or other stationery used by the Department or HCFA) or any other combination or variation of such symbols or emblems; and

(ii) Will not be imposed against any agency or instrumentality of a State, or political subdivision of the State, that makes use of any symbol or emblem, or any words or letters which specifically identifies that agency or instrumentality of the State or political subdivision.

* * * * *

4. Section 1003.103 is amended by revising paragraph (d) to read as follows:

§ 1003.103 Amount of penalty.

* * * * *

(d)(1) The OIG may impose a penalty of not more than $5,000 for each violation resulting from the misuse of Departmental, HCFA, Medicare or Medicaid program words, letters, symbols or emblems as described in § 1003.102(b)(7) relating to printed media, and a penalty of not more than $25,000 in the case of such misuse related to a broadcast or telecast, that is related to a determination under § 1003.102(b)(7).

(2) For purposes of this paragraph, a violation is defined as—

(i) In the case of a direct mailing solicitation or advertisement, each separate piece of mail which contains one or more words, letters, symbols or emblems related to a determination under § 1003.102(b)(7);

(ii) In the case of a printed solicitation or advertisement, each reproduction, reprinting or distribution of such item related to a determination under § 1003.102(b)(7); and

(iii) In the case of a broadcast or telecast, each airing of a single commercial or solicitation related to a determination under § 1003.102(b)(7).

* * * * *

5. Section 1003.106 is amended by revising paragraph (a)(3) to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) *Amount of penalty.* * * *

(3)(i) In determining the amount of any penalty in accordance with § 1003.102(b)(7), the OIG will take into account—

(A) The nature and objective of the advertisement, solicitation or other communication, and the degree to which it has the capacity to deceive members of the public;

(B) The degree of culpability of the individual, organization or entity in the use of the prohibited words, letters, symbols or emblems;

(C) The frequency and scope of the violation, and whether a specific segment of the population was targeted;

(D) The prior history of the individual, organization or entity in its willingness or refusal to comply with informal requests to correct violations;

(E) The history of prior offenses of the individual, organization or entity in its misuse of Departmental and program words, letters, symbols and emblems;

(F) The financial condition of the individual, organization or entity involved with the violation; and

(G) Such other matters as justice may require.

(ii) The use of a disclaimer of affiliation with the United States Government, the Department or its programs will not be considered as a mitigating factor in determining the amount of penalty in accordance with § 1003.102(b)(7).

* * * * *

Approved: October 13, 1995.

June Gibbs Brown,

Inspector General.

[FR Doc. 95–28307 Filed 11–24–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This document updates the addresses listed in 43 CFR 4.413(c) for the Office of the Solicitor and updates the identification of the States served by the Office of the Solicitor as listed in 43 CFR 4.1109(a).

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203. Telephone: 703–235–3750.

SUPPLEMENTARY INFORMATION: Because this action reflects agency management and changes of address that have already taken place, the Department has determined that the provisions of the Administrative Procedure Act, 5 U.S.C. 553 (b), (d), allowing for public notice and comment as well as a thirty-day delay in a rule's effective date, are unnecessary and impracticable.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

Therefore, under the authority of the Secretary of the Interior contained in 5 U.S.C. 301, § 4.413(c) in Subpart E, and § 4.1109(a) in Subpart L, both in Part 4 of Title 43 of the Code of Federal Regulations, are amended as follows:

PART 4—[AMENDED]

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

1. The authority citation for Part 4 continues to read:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.413 is amended by revising paragraphs (c)(1) and (c)(2) introductory text; revising the addresses following paragraphs (c)(2) (i), (ii) and (iv); removing the address following paragraph (c)(2)(v) and adding in its place paragraphs (c)(2)(v) (A) and (B); and revising the addresses following paragraphs (c)(2) (vi), (vii), (ix), (xi) and (xii) to read as follows:

§ 4.413 Service of notice of appeal and other documents.

* * * * *

(c)(1)(i) If the appeal is taken from a decision of the Director, Minerals Management Service, the appellant will serve the Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240.

(ii) If the appeal is taken from a decision of the Director, Bureau of Land Management, the appellant will serve:

(A) The Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended;

(B) The Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of mineral resources.

(c)(2) If the appeal is taken from a decision of other Bureau of Land Management (BLM) offices listed below (see § 1821.2–1(d) of this title), the appellant shall serve the appropriate official of the Office of the Solicitor as identified:

(i) * * *

Regional Solicitor, Alaska Region, U.S. Department of the Interior, 4230 University Drive, Suite 300, Anchorage, AK 99508–4626;

(ii) * * *

Field Solicitor, U.S. Department of the Interior, One Renaissance Square, Two North Central, Suite 1130, Phoenix, AZ 85004–2383;

* * * * *

(iv) * * *

Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D–105), Denver Federal Center, Denver, CO 80225;

Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215;

(v) * * *

(A) The Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended;

(B) The Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240, if the decision concerns the use and disposition of mineral resources.

(vi) * * *

Field Solicitor, U.S. Department of the Interior, Federal Building & U.S. Courthouse, 550 West Fort Street, MSC 020, Boise, ID 83724;

(vii) * * *

Regular U.S. Mail: Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107–1394;

Other Delivery Services: Field Solicitor, U.S. Department of the Interior, 316 North 26th Street, Room 3004, Billings, MT 59101;

* * * * *

(ix) * * *

Regular U.S. Mail: Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, NM 87504–1042;

Other Delivery Services: Field Solicitor, U.S. Department of the Interior, 150

Washington Avenue #207, Santa Fe, NM 87501;

* * * * *

(xi) * * *

Field Solicitor, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, UT 84138–1180;

(xii) * * *

Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D–105), Denver Federal Center, Denver, CO 80225;

Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215;

* * * * *

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

3. Section 4.1109 is amended by revising paragraph (a) to read as follows:

§ 4.1109 Service.

(a)(1) Any party initiating a proceeding in OHA under the Act shall, on the date of filing, simultaneously serve copies of the initiating documents on the officer in the Office of the Solicitor, U.S. Department of the Interior, representing OSMRE in the state in which the mining operation at issue is located, and on any other statutory parties specified under § 4.1105 of this part.

(2) The jurisdictions, addresses, and telephone numbers of the applicable officers of the Office of the Solicitor to be served under paragraph (a)(1) of this section are:

For mining operations in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Texas, and Virginia: Field Solicitor, U.S. Department of the Interior, 530 S. Gay Street, Room 308, Knoxville, Tennessee 37902; Telephone: (615) 545–4294; FAX: (615) 545–4314.

For mining operations in Maryland, Massachusetts, Michigan, Ohio, Pennsylvania, Rhode Island, and West Virginia: Field Solicitor, U.S. Department of the Interior, Ten Parkway Center, Room 385, Pittsburgh, Pennsylvania 15220; Telephone: (412) 937–4000; FAX: (412) 937–4003.

For mining operations in Colorado, Montana, North Dakota, South Dakota, and Wyoming, including mining operations located in Indian lands within those States: Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D–105), Denver Federal Center, Denver, CO 80225; Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5350; FAX: (303) 231–5360.

For mining operations in Arizona, California, and New Mexico, including mining operations located on Indian lands within those States except for the challenge of permitting decisions affecting mining operations located on Indian lands in those states: Regional Solicitor, Southwest Region, U.S. Department of the Interior, 2400 Louisiana Blvd. N.E., Building One, Suite 200, Albuquerque, NM 87110–4316; Telephone: (505) 883–6700; FAX: (505) 883–6711.

For challenge of permitting decisions affecting mining operations located on Indian lands within Arizona, California, and New Mexico: Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D–105), Denver Federal Center, Denver, CO 80225; Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5350; FAX: (303) 231–5360.

For mining operations in Alaska, Idaho, Oregon, Utah, and Washington, except for the challenge of permitting decisions affecting mining operations in Washington: Field Solicitor, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, UT 84138–1180; Telephone: (801) 524–5677; FAX: (801) 524–4506.

For the challenge of permitting decisions affecting mining operations in Washington: Regular U.S. Mail: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007 (D–105, Denver Federal Center, Denver CO 80225; Other Delivery Services: Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215; Telephone: (303) 231–5350; FAX: (303) 231–5360.

(3) Any party or other person who subsequently files any other document with OHA in the proceeding shall simultaneously serve copies of that document on all other parties and persons participating in the proceeding.

* * * * *

Dated: November 5, 1995.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 95–28649 Filed 11–24–95; 8:45 am]

BILLING CODE 4310–79–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 93–133, FCC 95–447]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order* to broaden, update, and clarify general exemptions from the radiotelegraph equipment requirements of the Communications Act for large cargo vessels, and from the radiotelegraph and radio communication requirements of the Communications Act and Safety Convention, respectively, for small passenger vessels. These amendments decrease regulatory burdens on operators of large cargo ships as well as small passenger vessels, while maintaining safety of life at sea.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Roger S. Noel of the Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted October 27, 1995, and released November 8, 1995. The full text of this action 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 may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In this action, the Commission made two distinct changes to the rules. First, the Commission broadened the general exemption for large oceangoing cargo vessels (those 1,600 gross tons and over) to permit domestic voyages to Alaska and United States possessions in the Caribbean, within 150 nautical miles of land. Further, the revised exemption includes vessels equipped with Global Maritime Distress and Safety System (GMDSS) radio installations, in lieu of radiotelegraph equipment. Therefore,

this action will eliminate the administrative burdens associated with preparing and processing individual exemption requests for such vessels, without decreasing safety of life at sea. Cargo vessels operating under the general exemption will equip with redundant, state-of-the-art radio communications equipment, rather than manual morse code installations.

2. Second, the Commission also broadened the general exemption from the radio communications requirements of the Communications Act and Safety Convention for small passenger vessels operated on certain domestic voyages, including short international voyages. This includes short international voyages (not more than 20 nautical miles from land or, alternatively, not more than 200 nautical miles between consecutive ports) to: the Bahamas; islands in the Caribbean Sea as far south as Venezuela; Baja California, Mexico; and British Columbia, Canada. Such voyages do not present a greater safety concern than those already authorized under the current general exemption. Thus, this action will eliminate administrative burdens associated with preparing and processing individual exemption requests for such vessels, without decreasing safety of life at sea. The short international voyages authorized under the broadened general exemption keep vessels well within reliable VHF or MF radio range while navigating.

3. The rules are set forth at the end of this document.

4. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

5. This *Report and Order* is issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Final Regulatory Flexibility Analysis

Need and Purpose of This Action

This *Report and Order* seeks to broaden, update and clarify the general exemptions found in the Commission's maritime service rules for large oceangoing cargo vessels and small passenger vessels. This action will reduce unnecessary economic and administrative burdens on vessel operators, while maintaining the current level of access to maritime safety communications.

Summary of the Issues Raised by the Public Comments in Response to the Initial Flexibility Analysis

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered

No significant alternative to this action was contained in the *Notice* or suggested by commenters. The action represents the best means to achieve the regulatory objective of minimizing the regulatory burden on the public.

List of Subjects in 47 CFR Part 80

Marine safety, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Title 47 of the Code of Federal Regulations, Part 80, is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1968, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.836 is amended by revising the section heading and paragraphs (a) and (c) to read as follows:

§ 80.836 General exemptions.

(a) General small passenger vessel exemptions, applicable to certain U.S. passenger vessels of less than 100 gross tons, are contained in subpart S of this part.

* * * * *

(c) Prior to February 1, 1999, cargo ships of 1600 gross tons and upward are exempt from the radiotelegraph requirements of Part II of Title II of the Communications Act, if the following criteria (paragraphs (c)(1) and (c)(2) of this section and either paragraph (c)(3) or (c)(4) of this section) are met:

(1) The ship operates on domestic voyages only. For purposes of this paragraph, the term domestic voyages includes ports in Alaska, U.S. possessions in the Caribbean, and along the coasts of the 48 contiguous states, so long as the vessel does not make port at a foreign destination;

(2) The routes of the voyage are never more than 150 nautical miles from the nearest land; and

(3) The ship complies fully with the requirements for the Global Maritime Distress & Safety System (GMDSS) contained in subpart W of this part; or

(4) The ship complies fully with all of the following conditions. The ship must:

(i) Be equipped with a satellite ship earth station providing both voice and telex, which has been type accepted for GMDSS use;

(ii) Be equipped with a VHF and MF radiotelephone installation which complies fully with subpart R of this part and has the additional capability of operating on the HF frequencies listed in § 80.369(b) for distress and safety communications (this capability may be added to the MF radiotelephone installation);

(iii) Be equipped with a narrow-band direct-printing radiotelegraph system with SITOR meeting the requirements of § 80.219;

(iv) Be equipped with at least two VHF transceivers capable of being powered by the reserve power supply (one of the VHF transceivers may be the VHF required by paragraph (b)(4)(ii) of this section);

(v) Be equipped with a Category 1, 406 MHz EPIRB meeting the requirements of § 80.1061;

(vi) Be equipped with a NAVTEX receiver meeting the requirements of § 80.1101(c)(1);

(vii) Be equipped with three two-way VHF radiotelephone apparatus and two radar transponders in accordance with § 80.1095;

(viii) In addition to the main power source, be equipped with an emergency power source which complies with all applicable rules and regulations of the U.S. Coast Guard (the satellite earth station, the narrow-band direct-printing equipment and the 500 kHz autoalarm receiver must be capable of being powered by the main and emergency power sources);

(ix) Be equipped with a 500 kHz autoalarm receiver and a means of recording or decoding any distress signal received for relay to the Coast Guard or a public coast station;

(x) Participate in the AMVER system when on voyages of more than twenty-four hours and have the capability of operating on at least four of the AMVER HF duplex channels;

(xi) Carry at least one licensed operator to operate and maintain all the ship's distress and safety radio communications equipment in accordance with §§ 80.159(c) and 80.169; and

(xii) Maintain a continuous watch on 2182 kHz and 156.8 MHz, in accordance with § 80.305(b), when navigated.

* * * * *

3. Section 80.933 is amended by revising the section heading and paragraph (b), redesignating paragraph (c) as paragraph (e), and adding new paragraphs (c) and (d) to read as follows:

§ 80.933 General small passenger vessel exemptions.

* * * * *

(b) All U.S. passenger vessels of less than 100 gross tons, not subject to the radio provisions of the Safety Convention, are exempt from the radiotelegraph provisions of Part II of Title III of the Communications Act, provided that the vessels are equipped with a radiotelephone installation fully complying with subpart S of this part.

(c) Prior to February 1, 1999, U.S. passenger vessels of less than 100 gross tons are exempt from the radiotelepraph requirements of Part II of Title III of the Communications Act and the MF radiotelephone requirements of this subpart as well as Regulations 7 to 11 of Chapter IV of the Safety Convention if the following criteria are fully met:

(1) The ship is equipped with a VHF radiotelephone installation meeting the requirements of this subpart;

(2) While navigating more than three nautical miles from the nearest land, the ship is equipped with:

(i) A Category 1, 406 MHz EPIRB meeting the requirements of § 80.1061;

(ii) A NAVTEX receiver meeting the requirements of § 80.1101(c)(1); and

(iii) Three two-way VHF radiotelephone apparatus and two radar transponders meeting the requirements of § 80.1095.

(3) The ship remains within communications range of U.S. Coast Guard or public coast stations operating in the band 156–162 MHz;

(4) The routes of the voyage are never more than 20 nautical miles from the nearest land or, alternatively, not more than 200 nautical miles between two consecutive ports, and are limited to the following domestic and international voyages:

(i) In waters contiguous to Hawaii, the Bahama Islands and the islands in the Caribbean Sea, including the Greater Antilles, Lesser Antilles, and the coastal waters of Venezuela between the Mouth of the Orinoco River and the Gulf of Venezuela;

(ii) In waters contiguous to the coast of Southern California from Point Conception south to Cape San Lucas, Mexico; the islands of San Miguel, Santa Rosa, Santa Cruz, Anacopa, San Nicolas, Santa Barbara, Santa Catalina, and San Clemente are considered to be within these waters; and,

(iii) In waters of the Pacific Northwest between Tacoma, Washington and the waters of British Columbia, Canada, as far north as Queen Charlotte Strait, never in the open sea.

(d) Prior to February 1, 1999, U.S. passenger vessels of less than 100 gross tons are exempt from the radiotelegraph requirements of Part II of Title III of the Communications Act, as well as Regulations 7 to 11 of Chapter IV of the Safety Convention, if the following criteria are fully met:

(1) The ship is equipped in accordance with paragraphs (c)(1) and (c)(2) of this section;

(2) The ship is equipped with a MF radiotelephone installation meeting the requirements of this subpart;

(3) The routes of the voyage are never more than 20 nautical miles from the nearest land or, alternatively, not more than 100 nautical miles between two consecutive ports, and are limited to international voyages between Florida and the Bahama Islands.

* * * * *

4. Section 80.1065 is amended by revising paragraph (b)(5)(iii) to read as follows:

§ 80.1065 Applicability.

* * * * *

(b) * * *

(5) * * *

(iii) The requirements of either § 80.836 or § 8.933.

* * * * *

[FR Doc. 95–28826 Filed 11–24–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 111495D]

Atlantic Swordfish Fishery; Bycatch Limit Adjustment

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

ACTION: Inseason action.

SUMMARY: This inseason action adjusts the longline bycatch limit for Atlantic swordfish. Aboard a vessel using or having aboard a longline and not having aboard harpoon gear, no more than six swordfish per trip as bycatch may be possessed in the North Atlantic Ocean to avoid exceeding the total allowable catch and reducing the potential for discard waste.

EFFECTIVE DATE: 0001 hours, local time, December 5, 1995, through 2400 hours, local time, December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald G. Rinaldo, 301-713- 2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*).

The implementing regulations at 50 CFR 630.25(c)(2)(ii) establish a bycatch of 15 swordfish that may be harvested by longline vessels during the non-directed fishery and provide that the Assistant Administrator for Fisheries, NOAA may modify the bycatch limits based upon the length of the directed fishery closure as well as the estimated catch per vessel in the non-directed fishery.

Considering reported landings to date, projections of total catch based on recent landings data and estimates of bycatch during the directed fishery closure since October 31, 1995, it has been determined that with a 15–fish bycatch limit, the bycatch quota for 1995 will be reached before December 31, 1995. Under 50 CFR 630.25(a)(2), NMFS is required to close the longline bycatch fishery for swordfish when its quota is reached, or is projected to be reached, by filing a document at the Office of the Federal Register at least 14 days before the closure is to become effective. Given the prolonged closure in the directed longline fishery for Atlantic swordfish, a closure of the bycatch fishery would require that all swordfish taken by longliners be discarded.

To avoid a bycatch closure and reduce potential discard waste, the longline fishery bycatch for Atlantic swordfish is reduced to six fish per trip. By reducing the longline bycatch limit to six fish for the month of December, it is projected that it is less likely that the 1995 bycatch quota will be exceeded.

During the bycatch fishery, aboard a vessel using or having aboard a longline and not having aboard harpoon gear, a person may not fish for swordfish from the North Atlantic swordfish stock and no more than six swordfish per trip as bycatch may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. This bycatch limit adjustment is effective from 0001 hours December 5, 1995, through 2400 hours December 31, 1995.

The directed fishery closure remains in effect through December 31, 1995.

Classification

This action is required by 50 CFR 630.25(a) and is exempt from review under E.O. 12866.

Dated: November 20, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–28875 Filed 11–21–95; 4:45 pm]

BILLING CODE 3510–22–F

50 CFR Part 697

[Docket No. 950605148–5261–02; I.D. 060195C]

RIN 0648–AH58

Atlantic Coast Weakfish Fishery; Moratorium in Exclusive Economic Zone (EEZ)

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule prohibiting the possession in or harvest from the exclusive economic zone (EEZ) of Atlantic coast weakfish (weakfish) from Maine through Florida. The intent of the rule is to provide protection for the overfished stock of weakfish, to ensure the effectiveness of state regulations, and to aid in the rebuilding of the stock.

EFFECTIVE DATE: December 21, 1995.

ADDRESSES: The Final Environmental Impact Statement/Regulatory Impact Review prepared for this rule is available from William Hogarth, 301–713–2339 or NMFS, F/CM3, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301–713–2339.

SUPPLEMENTARY INFORMATION:

Background

The background and rationale for this rule were contained in the preamble to the proposed rule (60 FR 32130, June 20, 1995) and are not repeated here.

Comments and Responses

NMFS held 9 public hearing to gather public comments on the proposed rule and the Draft Environmental Impact Statement and Draft Regulatory Impact Review (DEIS/RIR) documents. The hearings were held on the following dates at the below listed localities:

Morehead City, North Carolina 7/10/95
Fall River, Massachusetts 7/10/95
Manteo, North Carolina 7/12/95
Setauket, New York 7/12/95
Salisbury, Maryland 7/12/95
Cape May Court House, New Jersey 7/12/95
Mayport, Florida 7/13/95
Newport News, Virginia 7/17/95
Dover, Delaware 7/18/95

A total of 226 individuals attended the hearings. Most of the individuals commenting at the hearings from Massachusetts through New Jersey were in favor of the rule. Some of the individuals at the Setauket, New York hearing wanted a 16–inch size limit. One person at the Cape May, New Jersey hearing opposed the rule as proposed. Commenters at the Salisbury, Maryland hearing were in favor of some Federal action, but not necessarily the preferred alternative. At the Newport News, Virginia hearing, a number of individuals were for or against the rule. In North Carolina, there was strong opposition against the rule at the Manteo hearing, and an equal number of comments for and against the rule at the Morehead City hearing. At the Florida hearing, most individuals commented on a recent ban on commercial net fishing imposed by the state.

Written comments were received from the following states and organizations: The Atlantic States Marine Fisheries Commission (Commission); New England, Mid-Atlantic and South Atlantic Regional Fishery Management Councils; U.S. Fish and Wildlife Service; U.S. Environmental Protection Agency (EPA); Delaware Division of Fish and Wildlife; New York State Department of Environmental Conservation Division of Marine Resources; Commonwealth of Massachusetts Division of Marine Fisheries; North Carolina Division of Marine Fisheries; Georgia Department of Natural Resources; North Carolina Fisheries Association, Inc.; Center for Marine Conservation; Salt Water Sportsman; Chesapeake Bay Foundation; Shelter Rock Rifle and Pistol Club; Atlantic Coast Conservation Association of Virginia; National Audubon Society Living Oceans Program; American Sportfishing Association; Maryland Saltwater Sportfishermen's Association, Inc.; Huntington Anglers Club; Virginia Citizens Coalition-Good Government; Imperial Sportsmen's Club, Inc.; Bay Shore Tuna Club; Oakdale Sportsmans Club; Virginia Anglers Club; Suffolk County Senior Citizens Fishing Club; East Islip Anglers and Boating Association, Inc.; and the New York Sportfishing Federation. Of the states and organizations that submitted written comments, all support the proposal except the State of North Carolina and the North Carolina Fisheries Association. The Georgia Department of Natural Resources and the U.S. EPA both supported the proposal and recommended changes and/or clarifications that are addressed in this document.

In addition, written comments were received from 645 individuals from Virginia; 16 from North Carolina; 56 from Maryland; 8 from Delaware; 6 from Pennsylvania; 5 from New York; 5 from New Jersey; and one each from West Virginia, the District of Columbia, South Carolina, Indiana and Michigan for a total of 746 individuals of which 740 supported and 6 opposed the proposed rule.

In summarizing comments, it was difficult to differentiate between comments addressing the proposed rule, the DEIS/RIR, or both. Therefore, comments and responses on the two documents are listed together. A more detailed description of comments and NMFS responses is included in the Final Environmental Impact Statement and Regulatory Impact Review (FEIS/RIR) published by EPA in the Federal Register on October 6, 1995.

1. *Comment*: NMFS should be commended for taking actions to protect the declining weakfish fishery. The preferred alternative, to prohibit the harvest and possession of weakfish in the EEZ, seems appropriate since it is easy to understand and enforce. Why was the exemption for the possession of weakfish in the Block Island Sound area included? The FEIS/RIR should include an explanation for the Block Island exemption.

Response: The exemption in the DEIS/RIR was to allow fishermen from Block Island, Rhode Island, to transport weakfish through the EEZ to land at ports in Rhode Island. Currently, there are few weakfish landings from the Block Island Sound area, and comments received from the States of Massachusetts and Rhode Island agreed with your comment that the exemption should not be implemented. NMFS concurs and the exemption is deleted in the FEIS/RIR.

2. *Comment*: Several commenters called into question the findings on the status of the weakfish stock, contending that the DEIS/RIR used inaccurate assumptions, and/or did not include 1994 data.

Response: The 1994 data were not available when the DEIS/RIR was drafted. NMFS extended the comment period and during the extension worked

through the Commission to obtain the 1994 data. Since publishing the DEIS/RIR, 1994 data and a preliminary stock assessment analysis have been made available to NMFS by the Commission's weakfish stock assessment scientists. NMFS is satisfied that the assumptions used in the stock assessment are valid. Analysis of the 1994 data has shown that there has been some reduction in fishing mortality, but the mortality rate is still too high to allow rebuilding, and the stock is expected to decline unless further conservation measures are taken. NMFS still finds the weakfish stock severely overfished and in need of the conservation measures in this rule.

3. *Comment*: Under 50 CFR part 602, a Federal fishery management plan must specify a point in time by which an overfished stock must be rebuilt. A rebuilding schedule should be established for weakfish based on the life history of the species (e.g., one or one and a half generation time frame). The Commission's Weakfish Technical Committee should be consulted regarding an appropriate rebuilding time-line for weakfish. Additionally, what, if any, trigger is provided for reopening the EEZ to harvest of weakfish? Language similar to that found in the South Atlantic Fishery Management Council's Red Drum FMP should be included. Specifically, NMFS should maintain the prohibition of harvest and possession of weakfish in or from the EEZ until a specified SSB per recruit is attained and until such time as a TAC is specified by regulatory notice, the Secretary, or whatever the appropriate mechanism is that provides for harvest in the EEZ.

Response: NMFS agrees. It is our understanding that Amendment 3 to the Commission's weakfish plan will include a rebuilding schedule in addition to the target F. NMFS believes that a realistic rebuilding schedule would be 2–5 years after a moratorium is put in place and the states adhere to the Commission requirements. The target for removal of the moratorium would be a SSB per recruit of 20 percent, which is the current long term rebuilding level used by the Commission.

4. *Comment*: In Section 4.2(1) of the DEIS/RIR there is discussion of the impact of the alternative on the discard mortality of undersize weakfish in the directed fishery, but there is no mention of the impacts related to discard mortality of weakfish caught as bycatch in other fisheries. In its current form, the preferred alternative does not provide any additional gain in terms of reducing discard mortality in non-directed fisheries in the EEZ, especially the shrimp fishery. The relationship of the preferred alternative to bycatch reduction plans currently under development by the South Atlantic states and by the South Atlantic Fishery Management Council (SAFMC) needs to be clarified. Will the SAFMC's Shrimp FMP Amendment 2, pertaining specifically to bycatch, supersede this proposed Secretarial action as it relates to shrimp trawl bycatch in the EEZ?

Response: NMFS has further addressed bycatch and discards in the FEIS/RIR and in other responses to written comments on bycatch. The SAFMC's Shrimp FMP could control the bycatch requirements in the EEZ along with the Commission requirements, if the shrimp plan is amended properly, as they relate to reduction requirements and gear. However, the possession of weakfish in the EEZ will be controlled by the weakfish rule.

5. *Comment*: A number of commenters were concerned that implementing the rule would increase the bycatch (discards) of weakfish in non-directed EEZ fisheries and in directed and non-directed state fisheries.

Response: The rule would reduce some bycatch of small weakfish in the EEZ because there would be no directed EEZ fishery, and, therefore, bycatch from directed weakfish trips would be eliminated. The rule would not eliminate the discard mortality of undersize weakfish, as well as other species such as spot and Atlantic croaker, in the non-directed fisheries in the EEZ and in state waters. NMFS recognizes that a major problem with managing weakfish is how to reduce or control the bycatch of weakfish in other fisheries. The Commission is requiring states from North Carolina to Florida to implement bycatch reduction devices (BRDs) in shrimp trawls to reduce bycatch of weakfish by 50 percent. North Carolina met this requirement approximately 3 years ago.

In addition, the SAFMC is holding public hearings on several alternatives that will lead to an amendment to the Council's shrimp management plan that will address finfish bycatch. Several states, including Virginia and North Carolina, are experimenting with finfish escape panels for pound nets and haul seines. Bycatch can be minimized by implementing season closures and/or closed areas, and gear restrictions and modifications.

The NMFS rule to prohibit the harvest and possession of weakfish in the EEZ is aimed at complementing the Commission's weakfish plan and the individual state fishing plans approved by the Commission. The Commission's plan requires states to adopt mesh restrictions and retain these as part of their approved fishing plans until March 1996. NMFS believes that the problem of bycatch presently is being addressed by the states and Councils and that the measures they have put in place, or that they will implement, should reduce the major sources of bycatch mortality.

NMFS is aware that, even with the implementation of state regulations, there will still be some discards and the problem could increase as the stock rebuilds and larger fish enter the population. Some discards are unavoidable, but are acceptable to achieve the long term gains to the stock that will occur from closing the EEZ to weakfish harvest and possession. NMFS will reconsider the moratorium when the spawning stock biomass reaches 20 percent, the Commission rebuilding goal. NMFS is also aware that there is the possibility that some of the effort will simply move inshore to state waters. However, through the Commission's plan, states will continue to implement their approved state fishing plans, and require mesh sizes for gear used to take weakfish that correspond to the minimum weakfish size that has been chosen in their plans. This will reduce total bycatch and discards.

NMFS will monitor the effectiveness of the rule including the bycatch and discard mortality and take additional actions to reduce weakfish bycatch if they are necessary to rebuild the stock.

6. *Comment*: A closure by NMFS in the EEZ violates the intent of Amendment 1 of the Commission's weakfish plan by removing the flexibility given to the states.

Response: The closure in the EEZ supports the Commission's effort to reduce fishing mortality. The need to protect a seriously declining stock overrides the desire to maintain flexibility in the EEZ fishery. Fisheries will continue in state waters and states are allowed flexibility as long as their regulations are approved by the Commission.

7. *Comment*: States can impose their own regulations in the EEZ and these landings can be enforced by the Coast Guard with a ''Memorandum of Understanding'' (MOU).

Response: In the absence of Federal rules, states may regulate only their own citizens when fishing in the EEZ. However, the states' rules to implement the Commission's weakfish plan are not identical among states, therefore, making enforcement of such rules in the EEZ among many states' fishermen impracticable. Also, not all states have

a MOU with the Coast Guard to carry out enforcement of their rules in the EEZ.

8. *Comment*: There are no accurate data that divide EEZ and state water catches. The importance of tabulating the EEZ catch is that the North Carolina fishermen are complying with the Commission's plan.

Response: NMFS concedes that landings from the EEZ are difficult to verify. However, NMFS considers the landings information accurate enough to estimate that a considerable amount of the fishery for weakfish takes place in the EEZ. Overall State and Federal landings were used in the stock assessment. Compliance with the Commission's plan in state waters by North Carolina fishermen is assumed as part of the cooperative management program on weakfish.

9. *Comment*: The statement in the document that the flynet fishery continues to catch thousands of weakfish as bycatch to obtain ''10's'' of salable fish is wrong.

Response: NMFS agrees with this statement. A review of the document has shown that the statement should have said ''10,000's of salable fish.'' However, NMFS is concerned over the large number of small fish taken in the flynet fishery. A review of North Carolina flynet data has shown that the flynet fishery takes a large portion of small fish, many of which are discarded at sea.

10. *Comment*: Less than 20 percent of the flynet landings are less than 10 inches in length.

Response: Although less than 20 percent of the flynet landings are 10 inches in length, there are discards at sea of large numbers of fish smaller than 10 inches that are not landed. In addition, see North Carolina Division of Marine Fisheries flynet discussion on page 8 of the FEIS/RIR.

11. *Comment*: Several commenters said that the assumption that there would be an insignificant initial impact on very few fisherman with minimal cost to the government is false. Also, one commenter wanted a complete ''regulatory flexibility analysis'' prepared.

Response: NMFS concedes that there will be impacts to fishermen; however, for impacts to be considered significant under the DEIS/RIR they must exceed $100 million. NMFS does not expect impacts of the rule to exceed the $100 million level. No regulatory flexibility analysis is required unless there is a significant impact on a substantial number of small entities. Although directed fisheries are conducted for weakfish in the EEZ, the entire commercial landings from the EEZ in recent years has been valued at less than 2 million dollars.

12. *Comment*: The assumption that the enforcement of the rule is clear is wrong.

Response: NMFS assumption that enforcement of the rule will be clear is based on the fact that the rule imposes a complete prohibition on fishing and possession of weakfish in the EEZ. NMFS has no reason to assume that enforcement of the rule will not be easily understood by fishermen and law enforcement officials.

13. *Comment*: North Carolina harvested over 65 percent by weight of the weakfish landings. Why isn't the South Atlantic Council writing a weakfish plan?

Response: Historical landings show that weakfish were an important Mid-Atlantic fishery and weakfish had been under consideration for management planning by the Mid-Atlantic Fishery Management Council. However, because of workloads on other species, the Mid-Atlantic Council has requested that NMFS assist the Commission's effort to manage the species.

14. *Comment*: The rule does not take into account and allow for variations among and contingencies in fisheries, fishery resources, and catches. A moratorium would take away the ability of North Carolina to redirect its fisheries through regulations or adapt to changes in fish populations or Commission guidelines.

Response: The rule is designed to deal with a severely depressed stock so options to rebuild the fishery are limited. Since the rule does not include state waters, it leaves flexibility for states, through the Commission, to address interactions with other fisheries and conduct some controlled fishing in state waters.

15. *Comment*: The states' and the Commission's actions are beginning to stabilize the weakfish population. NMFS needs to allow more time for these management measures to take effect before proposing more restrictive measures.

Response: The recent updated stock assessment (1994) shows that the weakfish population continues to be overfished and that recruitment of young fish to the fishery may be in jeopardy. The Commission's Weakfish Management Board has endorsed NMFS' efforts to implement the rule. Therefore, NMFS sees no reason to delay action.

16. *Comment*: If the rule is trying to protect a few year classes of fish to allow them to spawn, then why is there any harvest at all allowed in the spring in spawning areas?

Response: Spring spawning takes place in state waters. Under the current Commission's plan, states are allowed, within limits, to take weakfish as long as the long term fishing mortality reductions are accomplished. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act, NMFS has no authority to implement regulations in state waters, except moratoria if states do not comply with the Commission's plan. Fishermen have to work through the Commission and state fisheries agencies to influence regulations in state waters.

17. *Comment*: Several commenters proposed using a 12–inch size limit in the EEZ because it is enforceable, reduces conflict in state and internal waters, and saves more weakfish than a complete closure.

Response: NMFS disagrees. A minimum size limit would still allow for a directed fishery which would provide an economic incentive to harvest. A moratorium negates all economic incentive to harvest, thereby limiting fishing mortality to the maximum extent possible.

18. *Comment*: To reduce recreational weakfish mortality, NMFS should reduce the minimum size to 12 inches. This will reduce catch and release mortality by allowing anglers to keep fish that would have to be thrown back dead.

Response: The rule is designed to reduce fishing pressure on weakfish in the EEZ to the maximum extent. Under the rule, directed fishing for weakfish will not be allowed and weakfish caught incidental to other recreational fishing must be immediately returned to the water. Allowing take and possession of 12–inch and over fish would encourage more fishing, not reduce fishing mortality.

19. *Comment*: NMFS should establish a no-trawl-zone at the mouth of large estuaries such as the Delaware and Chesapeake Bays. The closed area should be within a twelve mile radius centered at the mouth of each bay on the demarcation line. An alternative that has been suggested would be to extend the EEZ out to the twelve mile line all along the Mid-Atlantic coast and designate the waters inside of the 12 miles as a special management zone. The plan would still allow other types of fishing as long as the vessel is not trawling or using gear that would damage bottom structure.

Response: Establishing a no-trawl-zone out to twelve miles at the mouth of major estuaries would not protect weakfish from other fishing gears within

the closed trawl zone and would not reduce fishing effort on weakfish because fishing effort could be increased in the rest of the EEZ. The proposed alternative suggestion of designating all Mid-Atlantic waters out to 12 miles as a special management zone would be complicated to enforce and would not protect weakfish throughout the EEZ.

20. *Comment*: The closure will increase fishing efforts in state waters.

Response: NMFS concedes that there may be some shift in fishing effort to state waters. However, states allow fishing in their waters under the guidance of the Commission's plan, which is designed to control fishing effort.

21. *Comment*: Incidental weakfish bycatch should be allowed. Throwing back dead weakfish taken while fishing for other species is wasteful.

Response: NMFS believes it would be too difficult to determine that weakfish were caught as unwanted bycatch in a non-directed fishery. Allowing retention of dead fish may encourage directed fishing. It would also make the rule difficult to enforce.

22. *Comment*: The assumption that bycatch problems still exist in the South Atlantic shrimp fisheries lacks basis. The DEIS/RIR ignores the ongoing work by the shrimp industry to reduce by catch.

Response: States are required through the Commission's weakfish plan to reduce weakfish bycatch by 50 percent by the 1996 shrimping season. While the use of Turtle Excluder Devices (TEDs) and experimental programs is reducing some bycatch, only North Carolina has an approved Commission weakfish bycatch reduction program implemented in its waters. NMFS believes that bycatch of weakfish in South Atlantic shrimp fisheries will continue to be a problem until approved bycatch programs are implemented throughout the south Atlantic area.

23. *Comment*: There will be long term economic impacts because of the shift in effort of fishing vessels to other stressed species in inshore waters.

Response: NMFS acknowledges that some vessels may shift effort to other species or into inshore waters. Because the stock is severely overfished, the need to protect and rebuild the fishery takes precedent over the immediate economic impacts. Since there still is some recruitment, this rule, when enacted with companion Commission actions, should rebuild the fishery in 2–5 years.

24. *Comment*: A lack of regulatory management is not a problem off the North Carolina Coast.

Response: Because of the poor condition of the stock, NMFS considers weakfish in need of more management along the entire Atlantic Coast, including the EEZ off of North Carolina.

25. *Comment*: The commercial industry in North Carolina has concerns over the credibility of the process being followed for the DEIS/RIR. The same staff that developed the DEIS/RIR are also taking and reviewing comments and making recommendations on the closure to higher NMFS officials.

Response: NMFS Headquarters, Northeast and Southeast Regional and Science Center staff have cooperated in the preparation of the DEIS/RIR and responses to the comments. These personnel are the most familiar with the weakfish fishery and are, therefore, the most qualified to review comments and make recommendations to higher NMFS officials, who also provide some measure of oversight.

26. *Comment*: The rule does not provide for maximum protection of weakfish because only 27 percent of all fishing mortality on weakfish results from directed recreational and commercial fishing gears.

Response: The rule gives maximum protection for weakfish in the EEZ employing available conservation and management measures because fishing for and/or possession is not allowed.

27. *Comment*: Alternative C states that this alternative ''would increase the harvest of weakfish.'' North Carolina harvests over 50 percent of the weakfish in the EEZ with a 10–inch size limit. Consequently, moving to a 12–inch size limit with appropriate mesh sizes and maintaining the closure south of Cape Hatteras to flynets will not increase the harvest.

Response: Alternative C, if implemented with a 12–inch size limit with appropriate mesh, would reduce catch in North Carolina waters, but it would also increase catch off of other states that now have minimum size limits over 12 inches. Also, Alterative C, with a 12–inch size limit off of North Carolina, would be too difficult to enforce because there are other size limits and different companion weakfish regulations in place off of other states.

28. *Comment*: Implementing the proposed rule would create an increased effort in state waters that may increase contacts with marine mammals and sea turtles, an incident that could jeopardize all fishing in coastal waters.

Response: Implementing the rule may increase fishing effort in state waters, but fishermen would still be required to fish under Federal and State laws that protect marine mammals and sea turtles. A biological opinion issued by NMFS concluded that the proposed weakfish regulation may affect, but will not likely jeopardize the continued existence of endangered and threatened sea turtles, marine mammals, and fish under NMFS jurisdiction. In addition, state biologists from New Jersey, Maryland, New York, and Virginia have stated that due to state regulations, they do not expect effort to shift inshore. If North Carolina keeps the area south of Cape Hatteras closed to flynet fishery, this will reduce potential impacts to endangered species as well.

National Standard Comments and Responses

NMFS received a number of comments that claimed that the proposed rule did not meet the National Standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The comments and responses are listed below:

National Standards - General

29. *Comment*: If the EEZ is closed, the bycatch and resulting waste will violate all of the National Standards in the Magnuson Act.

Response: The overriding need to protect the severely declining weakfish stock necessitates the EEZ closure (See response to comment 21). NMFS believes the measures in the rule are consistent with the Magnuson Act. If bycatch of weakfish contributes to significant mortality so as to negate stock rebuilding, NMFS will consider further measures.

National Standard 1

30. *Comment*: Closing the EEZ does not promote optimum yield.

Response: The proposed rule does promote the objectives of optimum yield because it is designed to rebuild stocks so that fisheries can eventually be reopened with healthier stock.

National Standard 2

31. *Comment*: The scientific information used to support the proposed rule has been changed to show a different age length at spawning composition.

Response: NMFS delayed publishing the FEIS until the 1994 stock assessment was completed. Upon a review of this stock assessment, it was determined to be consistent with and re-enforced the data on which NMFS had based its decision; the stock continues to be severely overfished and the biological indicators remain lower than the long-term averages. The 1994 assessment has incorporated several changes since the

last assessment, which should improve the accuracy of the assessment and better reflect the weakfish fishery. These include: revision of the catch-at-age-matrix to reflect the ''new'' Marine Recreational Fisheries Statistics Survey (MRFSS) methodology; new shrimp bycatch estimates which have been re-estimated and linked to shrimp fishery effort; additional fishery independent survey data which were unavailable in past assessments; new recreational fishery dependent citation data from Virginia, North Carolina, Maryland and Delaware; changes in the maturation schedule to reflect a 90 percent maturation at age one rather than the 50 percent used in the past; and a new Virtual Population Analysis (VPA) Model which is more consistent with the changing regulations in the weakfish fishery. However, the bottom line remains the same; weakfish stock continues to be severely overfished.

National Standard 3

32. *Comment*: Since the rule only includes measures for the EEZ, it does not manage the weakfish throughout its range.

Response: The proposed rule does manage weakfish throughout its range because it covers the entire range of weakfish in the EEZ and supports the Commission's effort to manage weakfish when they are in state waters.

33. *Comment*: Closing the EEZ, while the states have a different form of management, is not close coordination of management.

Response: The rule was developed in close coordination with the states through the Commission, which is also attempting to reduce fishing mortality on weakfish in state waters. The rule implements a measure that is consistent with the various regulations of the states.

National Standard 4

34. *Comment*: The rule does not meet National Standard 4 because it would only affect commercial fishing since most commercial fishing in some states takes place in the EEZ.

Response: The rule is consistent with National Standard 4 because a complete closure to fishing in the EEZ treats all fishermen fishing in the EEZ equally and therefore does not discriminate between residents of different states.

35. *Comment*: The rule is not fair and equitable because its intent is to stop North Carolina fishermen from harvesting weakfish so that there will be harvest in other states, especially in New England.

Response: The purpose of the rule is to reduce fishing mortality on weakfish in the EEZ. With the weakfish stock in a depressed state, the species geographic range is constricted to the central areas of population density (mostly off of North Carolina and to a lesser extent through Delaware). Therefore, the major fishery is presently conducted by North Carolina fishermen. Fishing mortality can not be significantly reduced unless restrictions are placed in the areas where the fishery operates. In order for the rule to be effective, it must include the EEZ off North Carolina. The same restriction also applies to the EEZ off other east coast states. The intent of the rule is to rebuild the weakfish fishery along its entire historical range (Massachusetts through Florida), including waters off North Carolina.

36. *Comment*: Closing the EEZ to commercial fishing to allow sportfishing to increase landings is discriminatory.

Response: The rule is not discriminatory because it closes the EEZ to both commercial and recreational fishing and is designed to rebuild stocks so that both commercial and recreational fisheries will benefit.

37. *Comment*: The closure was not reasonably calculated to promote conservation.

Response: The rule is reasonably calculated to promote conservation because a closure gives protection to weakfish stocks in the EEZ.

38. *Comment*: No attempt was made to partition fishing mortality by state. The impression is that these regulations would be added to North Carolina in addition to existing regulations.

Response: Because weakfish migrate throughout most of the east coast EEZ, a closure of the waters off a selected state(s) would not be effective since gains made in reducing fishing mortality in one area could be negated by fishing in other areas. The rule's effects are additive to state regulations because the rule is design to complement the fishing reduction mortality program in the Commission's weakfish fisheries management plan that is implemented in state waters.

National Standard 5

39. *Comment*: The rule does not promote efficiency because throwing back fish caught incidentally in the EEZ is not efficient.

Response: NMFS concedes that some fish may be thrown back dead. However, allowing some fish to be kept would only encourage more fishing for weakfish. The overriding need to protect the depressed stock takes precedence.

40. *Comment*: The rule is a move by NMFS to increase the landing size to 12 inches, therefore, allocating the resource to those who take larger fish.

Response: The proposed rule does not have economic allocation as its purpose since all fishermen are treated the same. The rule has no size limit. It is a prohibition on the take and possession of weakfish in the EEZ, without regard to the size of the fish.

National Standard 6

No comments received.

National Standard 7

41. *Comment*: Most states are in compliance with the Commission's regulations. Therefore, the rule is an unnecessary duplication.

Response: The rule is not a duplication because it supports the Commission's effort to reduce fishing mortality on weakfish by insuring that there will be a comprehensive program to reduce fishing mortality on weakfish as they migrate throughout their State and Federal range.

Changes from the Proposed Rule

The definition section, § 697.2, of the proposed rule contained 14 definitions. Eleven of these definitions were already defined in § 620.2 of title 50 of the CFR. Any terms defined in § 620.2 are common to all domestic fishing regulations appearing in parts 630 through 699. Therefore, the eleven definitions were removed from the final rule to avoid duplication. In addition, eleven prohibitions listed in the proposed rule were reduced to four since seven of these prohibitions already appeared in § 620.7 and again would have been duplicative.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities. This certification remains valid for this final rule. The reasons were published in the proposed rule. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: November 21, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, part 697 is added to 50 CFR chapter VI to read as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

Subpart A—Atlantic Coast Weakfish Fishery

Sec.

Subpart B—[Reserved]

Authority: 16 U.S.C. 5101 *et seq.*

Subpart A—Atlantic Coast Weakfish Fishery

§ 697.1 Purpose and scope.

The regulations in this part implement section 804(b) of the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*, and govern fishing for and possession of Atlantic Coast weakfish in the EEZ.

§ 697.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Act means the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.*

Atlantic Coast weakfish means members of stocks or populations of the species *Cynoscion regalis*, found in the waters of the Atlantic Ocean north of Key West, FL.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

§ 697.3 Prohibitions.

In addition to the prohibitions set forth in § 620.7 of this chapter, the following prohibitions apply. It is unlawful for any person to do any of the following:

(a) Fish for Atlantic Coast weakfish in the EEZ;

(b) Harvest any Atlantic Coast weakfish from the EEZ;

(c) Possess any Atlantic Coast weakfish in or from the EEZ;

(d) Fail to return to the water immediately, with the least possible injury, any Atlantic Coast weakfish taken within the EEZ; or

(e) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, shipping, transporting, selling, offering for sale, purchasing, importing or exporting, or transferring of any Atlantic Coast weakfish.

§ 697.4 Relation to the Magnuson Act.

The provisions of sections 307 through 311 of the Magnuson Act, as amended, regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement apply with respect to the regulations in this part, as if the regulations in this part were issued under the Magnuson Act.

§ 697.5 Civil procedures.

The civil procedure regulations at 15 CFR part 904 apply to civil penalties, seizures, and forfeitures under the Act and the regulations in this part.

§ 697.6 Specifically authorized activities.

NMFS may authorize for the acquisition of information and data, activities that are otherwise prohibited by these regulations.

Subpart B—[Reserved]

[FR Doc. 95–28876 Filed 11–21–95; 4:45 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 227
Monday, November 27, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 225

RIN: 0584–ACO4

Removal of the ''Cheese Alternate Products'' Specifications From the National School Lunch Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed Rule; Reopening of comment period.

SUMMARY: This proposed rule reopens the comment period established in the National School Lunch Program (NSLP) proposed rule issued by the Department on September, 27, 1995 (60 FR 49807). This action is being taken in order to provide interested parties additional time to provide comments on the proposed rule ''Removal of the Cheese Alternate Product'' specifications from the NSLP.

DATES: To be assured of consideration, comments must be postmarked on or before December 27, 1995.

ADDRESSES: Ms. Marion Hinners, Section Head, Food Science and Nutrition Section, Technical Assistance Branch, Nutrition and Technical Services Division, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Ms. Marion Hinners, Section Head, Food Science and Nutrition Section, Technical Assistance Branch, Nutrition and Technical Services Division, USDA, (703)305–2556.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1995 the Department published at 60 FR 49807, a proposed rule to remove the specifications for cheese alternate products from the National School Lunch Program. That rule provided for a public comment period to run through November 13, 1995. Comments were expected from both the institutions currently utilizing the cheese alternate products as well as the manufacturers of the cheese alternates. A national trade organization requested an extension of the comment period. The Department believes that any additional comments would be beneficial in developing a final rule in this area. Accordingly, the Department is reopening the public comment period found in the September 27, 1995 regulations through December 27, 1995.

Dated: November 14, 1995.

William E. Ludwig,

Administrator, Food and Consumer Services.

[FR Doc. 95–28767 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 1160

[DA–96–01]

Fluid Milk Promotion Program; Notice of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This document announces that a referendum will be held to determine whether fluid milk processors favor the continuation of the Fluid Milk Promotion Order. The National Fluid Milk Processor Board, which administers the order, requested the action. The order will remain in effect if it is favored by at least 50 percent of the fluid milk processors who marketed at least 60 percent of the fluid milk products sold in the United States.

DATES: The referendum will be held on February 29 through March 7, 1996. The representative period for establishing voter eligibility will be September 1995.

FOR FURTHER INFORMATION CONTACT: Lance Jervis, Referendum Agent, USDA/AMS/Dairy Division, Room 2759, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–3869.

SUPPLEMENTARY INFORMATION: This document announces that a referendum will be conducted on February 29 through March 7, 1996, among fluid milk processors to determine whether the Fluid Milk Promotion Order should continue. The Order is authorized by the Fluid Milk Promotion Act of 1990, as amended by the Fluid Milk Promotion Amendments Act of 1993. The program is funded by a mandatory 20-cent assessment on processors whose monthly marketing exceeds 500,000 pounds of fluid milk products sold in the United States.

The Fluid Milk Promotion Order, which became effective December 10, 1993, provides that the Secretary shall conduct a continuation referendum at the request of the Board or any group of fluid milk processors which represents 10 percent or more of the fluid milk products marketed in the United States. The order specifies that this continuation referendum should be held not later than June 10, 1996, which is 30 months after the order's effective date.

The Fluid Milk Promotion Order will continue if the Secretary determines that it is favored by at least 50 percent of the processors voting in the referendum who during the representative period (as determined by the Secretary) marketed at least 60 percent of the volume of fluid milk products sold in the United States. The month of September 1995 is hereby determined to be the representative period for the conduct of such referendum. Fluid milk processors who wish to participate in the referendum will have to register to vote by certifying that they were processors during the month of September 1995. Those handlers processing and marketing more than 500,000 pounds of fluid milk products during the month of September will be eligible to vote in the referendum, provided they are fluid milk processors at the time of voter registration and during the time the referendum is conducted.

It is hereby directed that a referendum be conducted during the period of February 29 through March 7, 1996, in accordance with the procedure for the conduct of referenda (7 CFR 1160.600 et seq.), to determine whether the Fluid Milk Promotion Order is approved by fluid milk processors, who during the representative period were engaged in the distribution of fluid milk products within the 48 contiguous United States and the District of Columbia.

Lance Jervis is hereby designated as the agent of the Secretary to conduct such referendum.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are

included in the Fluid Milk Promotion Order have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board members' nominee information sheets that were assigned OMB No. 0505–0001.

List of Subjects in 7 CFR Part 1160

Milk, Fluid milk products, Promotion.

Authority: 7 U.S.C. 6401–6417.

Dated: November 20, 1995.

Shirley R. Watkins,

Acting Assistant Secretary Marketing and Regulatory Programs.

[FR Doc. 95–28769 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1208

[FV–95–702PR]

Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order—Postponement of Payment of Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule specifies general rules and regulations to be established under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order (Order). The Order is authorized under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993. This rule would implement a provision of the Order concerning the postponement of the payment of assessments. This action would create a form and establish procedures for qualified handlers to request the postponement of the payment of up to six months of assessments to the National PromoFlor Council. In addition, in accordance with the Paperwork Reduction Act of 1995, this proposed rule specifies the public reporting burden for the collection of information for requesting a postponement of payment of assessments.

DATES: Comments must be received by January 26, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed rule to: Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), USDA, P.O. Box 96456, Room 2535–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the Research and Promotion Branch during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register. Also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2535–S, Washington, DC 20090–6456, telephone (202) 720–9916.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993 (Pub. L. 103–190), (7 U.S.C. 6801 *et seq.*) hereinafter referred to as the Act.

This proposed rule has been issued in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8 of the Act, a person subject to the order may file a petition with the Secretary stating that the order or any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Only those wholesale handlers, retail distribution centers, producers, and importers who have annual sales of $750,000 or more of cut flowers and greens and who sell those products to exempt handlers, retailers, or consumers are considered qualified handlers and assessed under the Order. There are approximately 900 wholesaler handlers, 150 importers, and 200 domestic producers who are qualified handlers.

The majority of these qualified handlers would be classified as small businesses. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5 million. Statistics reported by the National Agricultural Statistics Service show that 1994 sales at wholesale of domestic cut flowers and greens total approximately $559.6 million while the value of imports during 1994 was approximately $382 million. The leading States in the United States producing cut flowers and greens, by wholesale value, are California, which produces approximately 59 percent of the domestic crop, followed by Florida, Colorado, and Hawaii. Major countries exporting cut flowers and greens into the United States, by value, are Columbia, which accounts for approximately 60 percent, followed by The Netherlands, Mexico, and Costa Rica.

The Administrator of the AMS has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

While this proposed rule would impose certain recordkeeping requirements on qualified handlers that request a postponement of the payment of assessments, most of the information required under the proposed rule could be compiled from records currently maintained. Thus, any added burden resulting from increased recordkeeping would not be significant when compared to the benefits that should accrue to such businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), a form to request the postponement of the payment, ''Application for Postponement of Payment of PromoFlor Assessment'', has been submitted to OMB for approval.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response for each qualified handler requesting a postponement of payment of assessment.

Respondents: Qualified handlers as defined in the Act.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.25 hours.

Copies of this information collection can be obtained from Sonia N. Jimenez at (202) 720–9916 or at the address listed above.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a national cut flowers and greens promotion and consumer information program. The program is funded by an assessment of ½ percent of gross sales of cut flowers and greens which is levied on qualified handlers.

This proposed rule would provide rules and regulations needed to implement provisions of the Order. Section 1208.55 of the Order provides for postponement of collections (7 CFR 108.55; 59 FR 67139). That section provides that the Council may grant a postponement of the payment of an assessment for any qualified handler that establishes that it is financially unable to make the payment.

Section 1208.100 of this rule would provide that the definitions for this subpart are the same as those prescribed in §§ 1208.1 through 1208.24 of the Order.

Section 1208.150 would provide for the postponement of the payment of assessments under certain circumstances. The Order provides for the postponement of the payment of assessments by a qualified handler if the payment of such assessment is determined to be a financial burden for the handler. Section 1208.55 of the Order states that ''The Council may grant a postponement of an assessment under this subpart for any qualified handler that establishes that it is financially unable to make the payment * * *'' In addition, the Order establishes that the Council shall develop forms and procedures for a qualified handler to request and for the Council to grant the postponement of the payment of assessments.

The Council met on September 11, 1995, and determined that, in order for a request for the postponement of assessments to be granted, the requester should comply with the following: (1) Submit a written opinion from a Certified Public Accountant stating that the handler making the request is insolvent or will be unable to continue to operate if the handler is required to pay the assessment when due and (2) submit copies of the last three years' federal tax returns. These two requirements are needed to verify that the qualified handler is financially unable to make the payment of the assessments due and that the postponement of payment, if granted, complies with the requirements set forth in the Order. In addition, the requester should submit to the Council a form ''Application for Postponement of Payment of PromoFlor Assessments.'' This collection of information would be authorized under OMB number 0581–0093 and would have an expiration date of January 31, 1997.

The period for which the postponement of the payment of the assessments is requested may not exceed six (6) months. Within that period of six (6) months, the qualified handler would be exempt from paying assessments beginning with the month for which the request for postponement is filed with the Council and for no more than six (6) months. The handler must provide a reason for the request as well as detailed information concerning the handler's name, address, telephone and fax numbers, the month(s) for which the request is made, the percent of the outstanding debt to be paid by month after the postponement of payment is granted, and the starting date for the payment. Furthermore, an authorized individual must sign and return the form to the Council's office.

Any late payment would make the agreement null and all assessments due would need to be paid in their entirety at that time. In addition, the Council agrees to forgo any late fee charges and interest for the duration of the agreement.

The request must be made no later than 30 days after the assessments were due. In addition, after the postponement period has concluded, the requester must pay the percentage of the outstanding debt agreed to be paid by month and the assessments due for the current month. Assessments due after the postponement of payment is completed would not be postponed unless an extension of time for payment is granted. If an extension of time is requested, new documentation must be provided for the Council to determine whether to grant the extension of time for the postponement of the payment of assessments. The same procedures used for the initial request must be used to grant an extension.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter. All responses regarding the information collection will be summarized and included in the request for OMB approval.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements—Cut flowers, Cut greens, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1208 is proposed to be amended as follows:

PART 1208—FRESH CUT FLOWERS AND FRESH CUT GREENS PROMOTION AND INFORMATION ORDER

1. The authority citation for 7 CFR Part 1208 continues to read as follows:

Authority: 7 U.S.C. 6801 et seq.

2. In Part 1208 a new subpart B is added to read as follows:

Subpart B—Rules and Regulations

Definitions

Sec.

Assessments

Subpart B—Rules and Regulations

Definitions

§ 1208.100 Terms defined.

Unless otherwise defined in this subpart, definitions or terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Order.

Assessments

§ 1208.150 Procedures for postponement of collections.

(a) For a request for postponement of the payment of assessments to be granted the qualified handler must comply with the following: Submit a written opinion from a Certified Public Accountant stating that the handler making the request is insolvent or will be unable to continue to operate if the handler is required to pay the assessments when due and submit copies of the last three years' federal tax returns. The request must be in writing no later than 30 days after the assessments for which the postponed payment is requested are due. The period for which the postponement of the payment of assessments is requested may not exceed six (6) months. The written request must specify:

(1) A reason for the request;

(2) Detailed information concerning the qualified handler's name, address, and telephone and fax numbers;

(3) The month(s) for which the request is made;

(4) Total assessments due;

(5) The percent of the outstanding debt to be paid each month after the postponement of payment is granted; and

(6) The starting date for the payment of assessments due.

(b) At the end of the postponement period, the qualified handler must pay the percentage of assessments due specified per month and the current month assessment due. If an extension of time is requested, new documentation must be provided for the Council to determine whether to grant the extension. The same procedures used for the initial request will be used to grant any extension.

Dated: November 20, 1995.

Robert C. Kenny,

Director, Fruit and Vegetable Division.

[FR Doc. 95–28770 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 93–128–1]

Viruses, Serums, Toxins, and Analogous Products; Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Standard Requirement for Encephalomyelitis Vaccine, Eastern and Western, Killed Virus, by specifying requirements for killed Venezuelan equine encephalomyelitis vaccines and revising the standard potency test for eastern and western encephalomyelitis vaccines. The effect of the proposed amendment would be to require the use of Vero 76 cells in the test to evaluate the potency of Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus, and to establish minimum antibody titers which must be elicited by each of the indicated fractions, as determined by a plaque reduction, serum neutralization assay in which Vero 76 cells are used.

DATES: Consideration will be given only to comments received on or before January 26, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93–128–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 93–128–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead (202)-690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the regulations contained in 9 CFR part 113, standard requirements are prescribed for the preparation of veterinary biological products. A standard requirement consists of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service to help ensure that veterinary biological products are pure, safe, potent, and efficacious.

The standard requirement for Encephalomyelitis Vaccine, Eastern and Western, Killed Virus, in § 113.207, specifies minimum potency requirements for such products. A serial of Eastern and Western equine encephalomyelitis vaccine must induce at least minimum antibody titers in guinea pigs specific for each fraction. The current standard requirement states that titers are to be determined in a plaque reduction, serum neutralization test but does not specify the cell type to be employed in the test. Primary duck embryo fibroblasts (DEF) were once considered the cells of choice; however, difficulties in producing acceptable DEF cultures are often encountered and results obtained with such cultures are not always consistent. These problems are not seen with cells of the Vero (African green monkey kidney) 76 cell line.

This proposed rule would revise the standard requirement in § 113.207 to require that cells of the Vero 76 cell line be used in encephalomyelitis vaccine potency tests. It would also revise the standard requirement by changing the minimum specific antibody titers from 1:4 to 1:40 for Eastern equine encephalomyelitis virus (EEV) and 1:32 to 1:40 for Western EEV. Extensive correlation work performed by the National Veterinary Services Laboratories (NVSL) indicates these new minimum specific antibody titers as measured using Vero 76 cells are equivalent to those currently specified in the standard requirement as measured with DEF.

In addition, the proposed rule would revise the standard requirement to establish standard test requirements for Encephalomyelitis Vaccine, Venezuelan, Killed Virus, and set 1:4 as the minimum specific antibody titer such vaccines must obtain to pass the potency test. The Agency has determined that a product that induces an anti-Venezuelan equine encephalomyelitis virus titer (as measured using Vero 76 cells) in guinea pigs of 1:4 or greater should protect horses against disease caused by that virus.

This proposed rule would establish uniform test requirements for all killed vaccines for the prevention of Venezuelan equine encephalomyelitis and would revise the current potency test to make it more reliable and consistent. Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule would revise the standard requirement in § 113.207 for Encephalomyelitis Vaccine, Eastern and Western, Killed Virus, by specifying a different cell type for use in the potency test assay and specifying different minimum specific antibody titers that must be achieved for a satisfactory test. In addition, the proposed rule would revise the standard requirement so that it would also apply to Encephalomyelitis Vaccine, Venezuelan, Killed Virus. The Agency believes the titers given in the standard requirement are adequately correlated with claimed efficacy and that they would be readily obtained by all relevant vaccines currently licensed. We do not expect any increase in cost to the biologics manufacturers affected by this proposed rule. The changes should actually decrease costs for most impacted manufacturers, since fewer repeat tests will be needed and obtaining Vero 76 cells should prove less expensive than procuring primary DEF.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not

have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 113

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

Accordingly, 9 CFR part 113 would be amended as follows:

PART 113—STANDARD REQUIREMENTS

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

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

2. In § 113.207, the section heading, the introductory text, the introductory text of paragraph (b), and paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) would be revised to read as follows:

§ 113.207 Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus.

Encephalomyelitis Vaccine, Eastern, Western, and Venezuelan, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Each serial or subserial shall meet the requirements prescribed in this section and the general requirements prescribed in § 113.200, except those in § 113.200(d). Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

* * * * *

(b) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency in accordance with the two-stage test provided in this paragraph. For each fraction contained in the product—Eastern type, Western type, or Venezuelan type—the serological interpretations required in this test shall be made independently. A serial or subserial found unsatisfactory for any of the fractions shall not be released.

(1) * * *

(2) Fourteen to 21 days after the second injection, serum samples from each vaccinate and each control shall be tested by a plaque reduction, serum neutralization test using Vero 76 cells.

(3) If the control serum samples show a titer of 1:4 or greater for any fraction, the test is inconclusive for that fraction and may be repeated: *Provided,* That, if four or more of the vaccinate serum samples show a titer of less than 1:40 for the Eastern type fraction, less than 1:40 for the Western type fraction, or less than 1:4 for the Venezuelan type fraction, the serial or subserial is unsatisfactory without further testing.

(4) If two or three of the vaccinate serum samples show a titer of less than 1:40 for the Eastern type fraction, less than 1:40 for the Western type fraction, or less than 1:4 for the Venezuelan type fraction, the second stage of the test may be used for the relevant fraction(s): *Provided,* That, if a fraction is found acceptable by the first stage of the test, the second stage need not be conducted for that fraction.

(5) If the second stage is used and four or more of the vaccinate serum samples show a titer of less than 1:40 for the Eastern type fraction or the Western type fraction, or less than 1:4 for the Venezuelan type fraction, the serial or subserial is unsatisfactory.

* * * * *

Done in Washington, DC, this 20th day of November 1996.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–28764 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–63]

Peter G. Crane, Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Mr. Peter G. Crane. The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–63. The petitioner requests that the NRC amend its regulations concerning emergency planning to include a requirement that emergency planning protective actions include sheltering, evacuation, and the prophylactic use of potassium iodide, which prevents thyroid cancer after nuclear accidents. The request would amend one of the 16 planning standards in 10 CFR 50.47 by which licensee emergency plans are evaluated in order to assure that the option of using potassium iodide is included in emergency planning.

DATES: Submit comments by February 12, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to those comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Services Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For information on submitting comments electronically, see ''Electronic Access'' under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Michael Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–6534, or Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or

directly via Internet. Background documents on this rulemaking also are available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll-free number 800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using the ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''rules menu'' option from the ''NRC main menu.'' Users will find the ''FedWorld On-line User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct-dial telephone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet: fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC on-line main menu. The NRC on-line area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC on-line main menu. However, if you access NRC at FedWorld by using NRC's toll-free number, although you will not have access to the main FedWorld system, you will have full access to all NRC systems.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploading files is not allowed; you will only see a list of files without descriptions (normal gopher look). An index file listing all files within a subdirectory and descriptions of those files, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the Worldwide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Background

The NRC received a petition for rulemaking dated September 9, 1995, submitted by Mr. Peter G. Crane on his own behalf. The petition was docketed as PRM–50–63 on September 12, 1995. The petitioner requests that the NRC amend its regulations in 10 CFR Part 50 that govern emergency planning. Specifically, the petitioner is seeking to amend one of the 16 planning standards in 10 CFR 50.47 to include the use of potassium iodide (KI) as one action to be considered in emergency situations under licensee emergency plans.

Potassium Iodide

The petitioner discusses KI and its uses. Specifically, KI protects the thyroid gland, which is highly sensitive to radiation, from the radioactive iodine that would be released in extremely serious nuclear accidents. By saturating the gland with iodine in a harmless form, KI prevents any inhaled or ingested radioactive iodine from lodging in the thyroid gland, where it could lead to thyroid cancer or other illnesses. The drug itself has a long shelf life—at least five years—and causes negligible side effects.

The petitioner further states that, in addition to preventing deaths from thyroid cancer, KI prevents radiation-caused illnesses. The petitioner indicates that thyroid cancer, curable in 90–95 percent of cases, generally means surgery, radiation treatment, and a lifetime of medication and monitoring. The petitioner asserts that the changes in medication that go with periodic scans put many patients on a physiological and psychological rollercoaster. The petitioner states that hypothyroidism can cause permanent retardation in children and, if undiagnosed, can condemn adults to a lifetime of fatigue, weakness, and chills.

Three Mile Island

The petitioner discusses the U.S. policy with regard to KI before the Three Mile Island (TMI) accident. In December 1978, the Food and Drug Administration (FDA) announced that it had determined that potassium iodide was safe and effective for thyroid protection in nuclear accidents. The issue attracted little attention and the NRC and the Federal Government as a whole took no public position on the drug.

Three months after the FDA announcement, on March 28, 1979, the TMI accident began to unfold. After two days of unsuccessful efforts to bring the reactor under control, it was still uncertain whether a major release of radioactivity could be averted. The petitioner states that Federal and State officials, searching for supplies of KI in case it should be needed, discovered that there was none to be had. A supply had to be manufactured, literally overnight. The petitioner indicates that at 3 am on Saturday, March 31, an FDA official arranged with the Mallinckrodt Chemical Company for the immediate production of 250,000 doses of KI. Without a written contract or a purchase order, the company began production and the first shipment of the drug arrived in Pennsylvania 24 hours later.

The petitioner also discusses that after the accident, President Carter appointed John Kemeny to head a commission to investigate the accident. The Kemeny Commission report, issued in October 1979, was strongly critical of the failure to stockpile KI. Among the Kemeny Commission's major recommendations was that an adequate supply of the radiation protective agent, potassium iodide for human use, should be available regionally for distribution to the general population and workers affected by a radiological emergency. The report also explained that different types of accidents might require different kinds of emergency response, particularly that in some accident situations, evacuation may not be the emergency planning measure of choice.

Potassium Iodide Policy

The petitioner states that Federal agencies initially supported the Kemeny Commission recommendation. In NUREG–0632, ''NRC Views and Analysis of the Recommendations of the President's Commission on the Accident at TMI,'' issued in November 1979, the NRC agreed with the findings of the Commission and planned to require nuclear power plant licensees to have adequate supplies of KI available for nuclear power plant workers and the general public as part of a State emergency response plan.

According to the petitioner, the three agencies most concerned, the FDA, NRC, and Federal Emergency Management Agency (FEMA), all favored the stockpiling KI for the next several years. The petitioner states that the Atomic Industrial Forum, a nuclear industry trade association, declared itself against the stockpiling of KI in May 1982.

The petitioner indicates that the NRC staff was strongly in favor of KI stockpiling as late as September 27, 1982, when the staff issued a memorandum to the Commissioners proposing that the NRC agree with a draft interagency policy statement supporting KI stockpiling. The petitioner further states that on October 15, 1982, less than three weeks after sending the draft policy statement to the Commission for approval, the staff sent a supplementary paper withdrawing the memorandum of September 27. The later memorandum informed the Commissioners that NRC's Office of Nuclear Regulatory Research could, by January 1, 1983, produce a paper showing that KI was significantly less cost beneficial than previously assumed. The staff proposed sending this document to the FDA and FEMA with the recommendation not to stockpile and distribute KI.

The petitioner indicates that the NRC staff briefed the Commissioners on the staff's proposal to take a strong position against KI in November 1983. A policy statement was later issued that disposed of, once and for all, the Kemeny Commission's recommendation in favor of stockpiling KI. According to the petitioner, only a year later, the Chernobyl accident would give tangible proof of the value of the drug in radiological emergencies.

Effects of Chernobyl

The petitioner states that during the Chernobyl accident of 1986, the damaged reactor spewed radioactive iodine over a wide area of what was then the Soviet Union and Poland. The petitioner further states that in Russia and the Ukraine, and also in Belarus, where the distribution of KI was inadequate and untimely, they are now experiencing extraordinarily high levels of childhood thyroid cancer; however, in Poland, where KI was administered to 97 percent of the nation's children, there has been no similar increase in thyroid cancer. The petitioner believes that Poland is a proof-positive example of the benefits of a well-prepared KI program.

The petitioner describes the U.S. Government spending to study radiation-caused thyroid cancer in Ukraine and Belarus. Announcing a $15 million 15-year program that will follow 70,000 children in Ukraine, the Department of Energy (DOE) declared in a press release that the studies provide a unique opportunity to understand the thyroid cancer risk of exposure to radioiodine. The DOE press release explained: ''The release of radioiodine is likely to figure prominently in any nuclear power plant disaster and knowledge of its carcinogen potency is inadequate, especially in children.'' In addition, the petitioner further states that the U.S. Government has spent generously to bring Ukrainian doctors to the United States for training in thyroid surgery because mishandled operations can result in damaged nerves and larynxes, and children rendered permanently mute.

The petitioner discusses post-Chernobyl developments on KI policy. He states that the Chernobyl accident demonstrated that KI worked and that countries that failed to stockpile and distribute it are finding themselves with serious public health problems.

Potassium Iodide Reconsidered

In June 1989, the NRC reconsidered the KI issue after the petitioner filed a differing professional opinion urging a change in policy. On November 27, 1989, the American Thyroid Association wrote to the NRC Commission urging KI stockpiling on a nationwide basis, and in 1990, the NRC announced that it was reconsidering the existing Federal policy. In April 1992, a contractor, under the sponsorship of the NRC Office of Nuclear Regulatory Research, issued a report that included a revised cost-benefit analysis of the use of KI. The petitioner describes the report as concluding that stockpiling continued not to be cost-effective, but that the difference between costs and benefits was narrower than had been calculated by the NRC staff in the early 1980s. Then the petitioner indicates that, in December 1993, an industry trade group, the Nuclear Management and Resources Council, sent a report entitled, ''Review of Federal Policy on Use of Potassium Iodide,'' to the Commission arguing against any change in current KI policy.

The petitioner states that in March 1994, the NRC staff declared its support for KI stockpiling. However, the NRC staff proposal for a change in policy was blocked when the Commissioners voted 2 to 2 in May 1994. Under NRC procedures, a tie vote on a proposal means that it fails.

Additional Support

The petitioner describes a September 1994 FEMA publication proposing a ''Federal Radiological Emergency Response Plan'' that envisions the use of KI during radiological emergencies. According to the petitioner, this implies that the authors of the plan recognize the drug's usefulness. Under the plan, the NRC would be the lead Federal agency during emergencies at nuclear power plants and would advise State and local governments (based on advise received from an interagency panel); the States and localities would then administer the KI, if necessary.

The petitioner also indicates that in 1994, the Board of Governors of the International Atomic Energy Agency, with U.S. Government support, adopted new ''International Basic Safety Standards.'' These standards represent the consensus of the world's experts on radiation safety. With regard to emergency planning, they provide, among other things: ''Intervention levels of immediate protective actions, including sheltering, evacuation, and iodine prophylaxis, shall be specified in emergency plans * * *'' thus the international radiation protection, like the Kemeny Commission in 1979 and the short-lived draft Federal policy statement of 1982, recognize that effective preparedness for radiological emergencies meant having three items to consider.

Discussion of the Petition

The NRC is soliciting public comment on Mr. Cranes's petition, which requests the changes to the regulations in 10 CFR part 50.

The petitioner has submitted this petition for rulemaking because he believes the NRC should implement the recommendation of the President's Commission on the Accident at Three Mile Island, known as the Kemeny Commission, that the United States maintain the option of using the drug potassium iodide for thyroid protection during nuclear accidents. The petitioner requests that the Commission definitively review and decide on the issue rather than simply have the NRC staff decide not to propose it to the Commission.

The petitioner states that evacuation is not necessarily the protective measure of choice in every emergency, and even when it is the preferred option, it is not always feasible. The Kemeny Commission report explained that different types of accidents, and the particular circumstances presented, may call for different protective measure. The petitioner believes maintaining a KI option ensures that responsible authorities have an additional type of protection at their disposal.

The petitioner indicates that NRC has made it clear that a finding of adequate emergency planning does not translate into a guarantee that the entire affected public can be evacuated necessarily, but that evacuation is generally feasible. The petitioner believes that sometimes, either by choice or necessity, authorities may be sheltering people or telling them to remain indoors rather than

evacuating them. The petitioner believes that it may be desirable to administer KI any time people are sheltered or told to stay indoors, when evacuation routes take people through areas of radiological contamination and when there is a large airborne release high in the atmosphere.

The petitioner believes that the decision on stockpiling KI should turn on whether, given the enormous consequences of being without it in a major accident, the drug is a prudent measure; not on whether it will necessarily pay for itself over time. The petitioner further believes that KI represents a kind of catastrophic-coverage insurance policy, offering protection for events which, while they occur only rarely, have such enormous consequences that it is sensible to take special precautions.

The petitioner states that the estimates of KI's cost-effectiveness depend on estimates that are no more than informed guesses about the probability of severe accidents. The NRC's cost-benefit analysis of the early 1980's was based on the assumption that a severe accident with a major release of radioactivity could occur in this country only once every thousand years.

The petitioner believes that if it were really true that serious accident with a release of radioactivity were so unlikely, there would be good reason not only to reject stockpiling of KI but also to dispense with all the rest of emergency planning. The petitioner also states that if KI is not cost-effective, then the rest of nuclear emergency planning is probably not cost-effective either. If serious accidents are really possible only every one or two thousand years, it is unlikely that any element of current nuclear emergency planning could be found cost-effective.

The petitioner believes that cost-benefit analysis is a technique that should be applied with good sense, especially where public health measures are concerned. According to the petitioner, the cost-benefit analysis of KI proceeded from the assumption that there was no difference in desirability between prevention of radiation-caused thyroid disease and cure; thus the only factor to be considered in evaluating KI was the difference in cost. The petitioner also believes that the U.S. Government determined that instead of spending money to prevent radiation-caused thyroid disease, society should spend its money treating the disease if and when it occurs.

The petitioner believes that the existing policy on KI was defective from the start because it was based, in part, on inaccurate information provided to the NRC Commissioners. He states that the information provided to the NRC Commissioners seriously understated the significance of radiation-caused thyroid disease and thereby understated to an equal degree the value of KI.

The petitioner also believes that it was not clear that the Commission had any idea of the real nature of post-accident thyroid disease at the time they adopted an anti-KI position.

The petitioner states that existing policy purports to leave the judgment on stockpiling KI to the States; however this policy also ensures that the States do not have an adequate basis for making informed decisions. He believes that the Federal Government, and NRC in particular, has failed to provide the States with sound technical advice on the subject. The petitioner also believes that without accurate and current information on KI—including the Chernobyl experience and the consensus of international experts—States cannot make an informed judgment.

The petitioner mentions a letter to the Commissioners from Senators Simpson and Lieberman sent in April 1994. This letter stated that the Federal Government has a moral responsibility to provide the public with complete and accurate information regarding the risks from Federally-licensed activities and ways in which those risks may be reduced. The petitioner also mentions FEMA's Federal Emergency Response Plan of September 1994. The plan provides that, in an emergency at a nuclear power plant, an interagency advisory team will provide guidance on KI to the NRC, and the NRC will provide advice to State and local governments on measures that they should take to avoid or reduce exposure to the public, including sheltering, evacuation, and prophylactic use of iodine.

The petitioner believes that no State or local official or member of the public could imagine that in a real emergency, there would be no iodine to administer. The petitioner raises the question: If KI stockpiling is not worthwhile, why is administration of the drug one of the protective measures identified in the plan? He also questions that if KI is worthwhile, as the plan implies, then why isn't something being done to make sure that it is available?

The petitioner believes that the Federal Government should either change the 1985 policy and make the use of KI a viable option in a real emergency, or it should explain why the United States has decided that KI will not be an option.

The Petitioner's Proposed Amendment

The petitioner requests that 10 CFR Part 50 be amended to include language taken from FEMA's Federal Radiological Emergency Response Plan of September 1994 and recommends the following revision to the regulations:

The petitioner proposes that § 50.47 be amended by revising paragraph (10) to read as follows:

§ 50.47 Emergency plans.

(a) * * *

(10) A range of protective actions, including sheltering, evacuation, and prophylactic use of iodine, have been developed for the plume exposure pathway EPZ [emergency planning zone] for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidelines, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

* * * * *

The petitioner believes that if this change is adopted, the plan will become an accurate description of emergency preparedness for radiological emergencies; the recommendation of the Kemeny Commission will at last be implemented; and the United States will be in compliance with the International Basic Safety Standards.

The petitioner suggests that the NRC, either on its own or jointly with other agencies, issue a policy statement declaring that KI stockpiling is a sensible and prudent measure that is necessary to ensure that the drug will be available in the event of a major accident. The petitioner believes that this statement would clarify that KI can be used in conjunction with evacuation and sheltering to maximize protection to the public.

The petitioner also believes that the policy statement would state the willingness of the NRC to provide a stockpile of the drug to States and localities upon request, and would support the Kemeny Commission's recommendation for the creation of regional stockpiles of the drug as a backup for emergencies.

Dated at Rockville, Maryland, this 20th day of November, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–28832 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Standards of Conduct and Other Employee Responsibilities

AGENCY: Small Business Administration.

ACTION: Proposed Rule.

SUMMARY: The Small Business Administration (SBA) proposes to amend its regulations governing employee standards of conduct. The proposed amendment repeals provisions that are superseded by the Office of Government Ethics (OGE) Uniform Standards of Conduct for Employees of the Executive Branch (5 CFR part 2635); amends two provisions by including participating lender status in the definition of SBA Assistance and adding the Associate General Counsel for General Law as an Assistant Standards of Conduct Counselor; and renumbers the remaining provisions with several minor technical amendments.

DATES: Comments must be received on or before December 27, 1995.

ADDRESSES: Please send comments to David R. Kohler, Regulatory Reform Team Leader (105), Suite 13, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robinson S. Nunn, Chief Counsel for Ethics, Office of the General Counsel, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, (202) 205–6867, or Martin D. Teckler, Deputy General Counsel (202) 205–6642.

SUPPLEMENTARY INFORMATION: The Small Business Administration is proposing to repeal numerous provisions of its existing standards of conduct regulations at 13 CFR Part 105 which were superseded by the Office of Government Ethics' (OGE) uniform Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635); eliminated by other regulatory authority; or determined to be inappropriate for continued inclusion in this part. SBA proposes to repeal the following sections of 13 CFR Part 105: 105.101 through 105.301; 105.401; 105.402; 105.405; 105.406 through 105.408; 105.501 through 105.505; 105.506 except paragraph (g)(1); 105.507 through 105.515; 105.518 through 105.521 and 105.901. The remaining provisions of 13 CFR Part 105 would be renumbered and renamed ''Standards of Conduct and Employee Restrictions and Responsibilities.''

In place of SBA's former standards at 13 CFR part 105, SBA would issue a residual cross reference provision at new 13 CFR 105.101 to refer to the uniform Standards of Conduct and financial disclosure regulations for Executive Branch employees and SBA's Supplemental Standards of Conduct regulation. Additionally, SBA would reissue, in the new 13 CFR part 105, several provisions regarding other employee responsibilities.

Section-by-Section Analysis.

Section 105.101 Cross Reference to Employee Ethical Conduct Standards and Financial Disclosure Regulations.

This section will notify SBA employees that the Standards of Ethical Conduct for Executive Branch employees are codified at 5 CFR Part 2635, the uniform financial disclosure regulation for Executive Branch employees is codified at 5 CFR Part 2634, and the Agency Supplemental Standards of Conduct are to be codified at 5 CFR Chapter XLIV.

Sec. 105.201 Definitions

This section provides definitions unique to SBA which are applicable throughout this part. Some definitions have been deleted from the former 13 CFR 105.201, as not needed for an understanding of this part. The definition of ''SBA Assistance'' was amended to include all participating lenders, including banks as recipients of SBA Assistance.

Sec. 105.202 Employment of Former Employee by Person Previously the Recipient of SBA Assistance

This section is the first of two sections which would provide restrictions relating to former SBA employees. Section 105.202 is based on a provision of the Small Business Act (15 U.S.C. 642) and sets forth conditions under which only a former SBA employee who occupied a position involving discretion or who exercised discretion with respect to the granting of SBA Assistance or the administration of such assistance, would be prohibited from accepting or retaining a position as employee, partner, or otherwise, with a concern which has received this specific SBA Assistance, for a period of two years following the the granting or administration of such assistance. It is anticipated that as was the case with former § 105.403, this prohibition will apply only to those SBA employees who had final discretionary authority over the making or administration of specific SBA Assistance. It would not apply to those whose responsibilities extended only to provision of advice or recommendations on the granting or administering of Assistance or performance of ministerial acts with respect to its administration. Section 105.202 was formerly located at 13 CFR 105.403.

Sec. 105.203 SBA Assistance to Person Employing Former SBA Employee

This section is based on the same provision of the Small Business Act as § 105.202. It would prohibit SBA from providing assistance to any person who has as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor, or debtor, any individual who, within one year prior to the request for such assistance, was an SBA employee, without the prior approval of the SBA Standards of Conduct Counselor.

Additionally, this section sets forth the criteria to be used in reviewing such applications for SBA Assistance. Section 105.203 was formerly located at 13 CFR 105.404.

Sec. 105.204 Assistance to SBA Employees or Members of Their Household

This section explains that prior written approval of the Standards of Conduct Committee is required before any SBA Assistance, other than Disaster Loans, as defined in subparagraphs (1) and (2) of section 7(b) of the Small Business Act, can be provided to a person whose sole proprietor, partner, officer, director, or significant stockholder is an SBA employee or a member of his or her household. Section 105.204 was formerly located at 13 CFR 105.506(g)(1).

Sec. 105.205 Duty to Report Irregularities

This section explains the requirement that employees report acts of malfeasance or misfeasance to the Inspector General. This section was formerly located at 13 CFR § 105.516.

Sec. 105.206 Applicable Rules and Directions

This section explains the requirement that employees follow Agency rules, regulations, operating procedures, instructions and other proper directions in the performance of official functions. This section was formerly located at 13 CFR 105.517.

Sec. 105.207 Politically Motivated Activities With Respect to the Minority Small Business Program

This section sets forth prohibitions, on certain SBA employees, and remedial measures for violations of those prohibitions with regard to the programs or activities conducted pursuant to sections 8(a) and 7(j) of the

Small Business Act. This section is based on sec. 8(a)(19) of the Small Business Act (15 U.S.C. 637(a)(19)).

Paragraph (a) of § 105.207 prohibits employees, who have authority to take, direct others to take, recommend, or approve any action with respect to transactions undertaken pursuant to section 7(j) of the Small Business Act, from exercising or threatening to exercise such authority on the basis of the political activity or affiliation of any party. Furthermore, subsection (a) requires all employees to ''expeditiously report'' to SBA's Inspector General any such action for which the employee's participation has been solicited or directed.

Paragraph (b) asserts that the penalty for violations of this section may consist of separation from service, reduction in grade, suspension, or reprimand and shall be imposed by the Administrator.

Paragraph (c) notes that this section does not apply to any action taken as a penalty or other enforcement of a violation of any law, rules, or regulations prohibiting or restricting political activity. This section was formerly located at 13 CFR 105.522.

Sec. 105.208 Penalties

This section states that any employee found guilty of violating these regulations may be subject to disciplinary action, including dismissal or suspension from SBA employment. This provision was formerly located at 13 CFR 105.701.

Sec. 105.301 Assistance to Officers or Employees of Other Government Organizations

This section requires a prior written statement from the appropriate department or military service before any SBA Assistance may be granted to a person whose sole proprietor, general partner, officer, director, or stockholder with a 10% or more interest is an employee of another Government agency or department, having a grade of GS–13 or its equivalent or higher, in the case of civilian employees, or the rank of major or lieutenant commander, or its equivalent or higher, in the case of military personnel.

Additionally, this section provides that, except in special circumstances, approved by the Standards of Conduct Committee, SBA will not enter into a contract with a person when its principal, or member of his or her household, is an employee of a Government agency.

Finally, this section requires similar Standards of Conduct Committee approval before granting SBA Assistance, other than Disaster Loans, to persons whose principal, or member of their household, is a member of Congress, an appointed official, or an employee of the legislative or judicial branch of the Government. This provision was formerly located at 13 CFR 105.601.

Sec. 105.302 Assistance to Employees or Members of Quasi-Government Organizations

This section discusses the requirement of Standards of Conduct Committee approval for SBA Assistance to members of employees of Small Business Advisory Councils, SCORE volunteers, or members of their household. This section was formerly located at 13 CFR 105.602.

Sec. 105.401 Standards of Conduct Committee

This section sets forth the functions and responsibilities of the SBA Standards of Conduct Committee. The Committee's responsibilities include advising and giving direction in the administration of standards of conduct regulations and making decisions on specific requests for guidance from Agency management, in connection with matters related to standards of conduct.

This section also delineates the composition of the Standards of Conduct Committee: the General Counsel or Deputy General Counsel in his or her absence; the Associate Deputy Administrator for Management and Administration or the Assistant Administrator for Administration, in his or her absence; and the Director of Personnel or the Deputy Director of Personnel in his or her absence.

This provision was formerly located at 13 CFR 105.801.

Sec. 105.402 Standards of Conduct Counselors

This section designates the Deputy General Counsel as SBA Standards of Conduct Counselor and the Associate General Counsel for General Law as an Assistant Standards of Conduct Counselor, and outlines the duties and responsibilities of those positions. This provision was formerly located at 13 CFR 105.402, except that the current § 105.802 has been amended to add the Associate General Counsel as an Assistant Standards of Conduct Counselor and to delete Regional Standards of Conduct Counselors. The section also amends the standards of conduct Counselors' responsibilities for review of employees Confidential Financial Disclosure Reports (Standard Form 450) instead of the previous requirement to review Statements of Employment and Financial Interests (SBA Form 703).

Sec. 105.403 Designated Agency Ethics Official

This section designates the Deputy General Counsel as SBA's Designated Agency Ethics Official, authorizes the appointment of Alternate Ethics Officials, and outlines the duties and responsibilities for those positions. This provision was formerly located at 13 CFR 105.403, except that the current section has been amended to permit the appointment of more than one Alternate Agency Ethics Official.

Compliance With Executive Orders 12612, 12778 and 12866; the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.; and the Paperwork Reduction Act, 44 U.S.C. ch. 35

SBA certifies that this proposed rule will not be considered a significant rule within the meaning of Executive Order 12866 and will not 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.*

For purposes of Executive Order 12612, SBA certifies that this proposed rule would not have federalism implications.

For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Paperwork Reduction Act, SBA certifies that this proposed rule, if promulgated in final, would impose no new reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 105

Conflict of interest.

For the reasons set forth above, SBA is amending Title 13 of the Code of Federal Regulations as follows:

Part 105 of Title 13, Code of Federal Regulations, is revised to read as follows:

PART 105—STANDARDS OF CONDUCT AND EMPLOYEE RESTRICTIONS AND RESPONSIBILITIES

Standards of Conduct

Sec.

Restrictions and Responsibilities Related to SBA Employees and Former Employees

Authority: 5 U.S.C. 7301; 15 U.S.C. 634; 15 U.S.C. 637(a)(18) and (a)(19), 642, and 645(a).

Standards of Conduct

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

In addition to this Part, Small Business Administration (SBA) employees should refer to the uniform Standards of Ethical Conduct for Executive Branch employees at 5 CFR Part 2635, the SBA Supplemental Standards of Ethical Conduct at 5 CFR Chapter XLIV, and the uniform Financial Disclosure regulation for Executive Branch employees at 5 CFR Part 2634.

Restrictions and Responsibilities Related to SBA Employees and Former Employees

§ 105.201 Definitions.

(a) *Employee* means an officer or employee of the SBA regardless of grade, status or place of employment, including employees on leave with pay or on leave without pay other than those on extended military leave. Unless stated otherwise. Employee shall include those within the category of Special Government Employee.

(b) *Special Government Employee* means an officer or employee of SBA, who is retained, appointed or employed to perform temporary duties on a full-time or intermittent basis, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days.

(c) *Person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(d) *Household member* means spouse and minor children of an employee, all blood relations of the employee and his any spouse who reside in the same place of abode with the employee.

(e) *SBA Assistance* means financial, contractual, grant, managerial or other aid, including size determinations, section 8(a) participation, licensing, certification, participating lender status, and other eligibility determinations made by SBA. The term also includes an express decision to compromise or defer possible litigation or other adverse action.

§ 105.202 Employment of former employee by person previously the recipient of SBA Assistance.

(a) No former employee, who occupied a position involving discretion over, or who exercised discretion with respect to, the granting or administration of SBA Assistance may occupy a position as employee, partner, agent, attorney or other representative of a concern which has received this SBA Assistance for a period of two years following the date of granting or administering such SBA Assistance if—

(1) The date of granting or administering such SBA Assistance was within the period of the employee's term of employment, or;

(2) The date of granting or administering such SBA Assistance was within one year following the termination of such employment.

(b) Failure of a recipient of SBA Assistance to comply with these provisions may result, in the discretion of SBA, in the requirement for immediate repayment of SBA financial Assistance, the immediate termination of other SBA Assistance involved or other appropriate action.

§ 105.203 SBA Assistance to person employing former SBA employee.

(a) SBA will not provide SBA Assistance to any person who has, as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor or debtor, any individual who, within one year prior to the request for such SBA Assistance was an SBA employee, without the prior approval of the SBA Standards of Conduct Counselor. The Standards of Conduct Counselor will refer matters of a controversial nature to the Standards of Conduct Committee for final decision; otherwise, his or her decision is final.

(b) In reviewing requests for approval, the Standards of Conduct Counselor will consider:

(1) The relationship of the former employee with the applicant concern;

(2) The nature of the SBA Assistance requested;

(3) The position held by the former employee with SBA and its relationship to the SBA Assistance requested; and

(4) Whether an apparent conflict of interest might exist if the SBA Assistance were granted.

§ 105.204 Assistance to SBA employees or members of their household.

Without the prior written approval of the Standards of Conduct Committee, no SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, shall be furnished to a person when the sole proprietor, partner, officer, director or significant stockholder of the person is an SBA employee or a household member.

§ 105.205 Duty to report irregularities.

Every employee shall immediately report to the SBA Inspector General any acts of malfeasance or misfeasance or other irregularities, either actual or suspected, arising in connection with the performance by SBA of any of its official functions.

§ 105.206 Applicable rules and directions.

Every employee shall follow all agency rules, regulations, operating procedures, instructions and other proper directions in the performance of his official functions.

§ 105.207 Politically motivated activities with respect to the Minority Small Business Program.

(a) Any employee who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to section 8(a) or section 7(j) of the Small Business Act, shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees shall expeditiously report to the SBA Inspector General any such action for which such employee's participation has been solicited or directed.

(b) Any employee who willfully and knowingly violates this section shall be subject to disciplinary action, which may consist of separation from service, reduction in grade, suspension, or reprimand.

(c) This section shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rules, or regulation prohibiting or restricting political activity.

(d) The prohibitions of and remedial measures provided for under this section with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

§ 105.208 Penalties.

Any employee guilty of violating any of the provisions in this Part may be disciplined, including removal or suspension from SBA employment.

Restrictions on SBA Assistance to Other Individuals

§ 105.301 Assistance to employees of other Government organizations.

(a) SBA must receive a written statement of no objection by the pertinent Department or military service before it gives any SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, to a person when its sole proprietor, partner, officer, director or stockholder with a 10 percent or more interest, or a household member, is an employee of another Government Department or Agency having a grade of at least GS–13 or its equivalent.

(b) The Standards of Conduct Committee must approve an SBA contract with an entity if a sole proprietor, general partner, officer, director, or stockholder with a 10 or more percent interest (or a household member of such individuals) is an employee of a Government Department or Agency. See also 48 CFR Subpart 3.6.

(c) The Standards of Conduct Committee must approve SBA Assistance, other than disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, to a person if its sole proprietor, general partner, officer, director or stockholder with a 10 percent or more interest (or a household member of such individual) is a member of Congress or an appointed official or employee of the legislative or judicial branch of the Government.

§ 105.302 Assistance to employees or members of quasi-Government organizations.

(a) The Standards of Conduct Committee must approve SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, to a person if its sole proprietor, general partner, officer, director or stockholder with a 10 percent or more interest (or a household member) is a member or employee of a Small Business Advisory Council or is a SCORE volunteer.

(b) In reviewing requests for approval, factors the Standards of Conduct Committee may consider include whether the granting of the SBA Assistance might result in or create the appearance of giving preferential treatment, the loss of complete independence or impartiality, or adversely affect the confidence of the public in the integrity of the Government.

Administrative Provisions

§ 105.401 Standards of Conduct Committee.

(a) The Standards of Conduct Committee will:

(1) Advise and give direction to SBA management officials in the administration of this Part and any other rules, regulations or directives dealing with conflicts of interest and ethical standards of SBA employees; and

(2) Make decisions on specific requests when its approval is required.

(b) The Standards of Conduct Committee will consist of:

(1) The General Counsel or, in his or her absence, the Deputy General Counsel or, in his or her absence, the Acting General Counsel who shall act as Chairman of the Committee;

(2) The Associate Deputy Administrator for Management and Administration, or in his or her absence, the Assistant Administrator for Administration; and

(3) The Director of Human Resources, or in his or her absence the Deputy Director of Human Resources.

§ 105.402 Standards of Conduct Counselors.

(a) The SBA Standards of Conduct Counselor is the Deputy General Counsel. The Associate General Counsel for General Law (AGC) is an Assistant Standards of Conduct Counselor, and other Assistants may be designated by the Standards of Conduct Counselor.

(b) The Standards of Conduct Counselors and Assistants:

(1) Provide general advice, assistance and guidance to employees concerning this Part and the regulations referred to in § 105.101.

(2) Monitor the Standards of Conduct Program within their assigned areas and provide required reports thereon;

(3) Review Confidential Financial Disclosure Reports as required under 5 CFR Part 2634, Subpart I and provide an annual report on compliance with filing requirements to the SBA Standards of Conduct Counselor as of February 1 of each year; and

(4) Provide Outside Employment decisions pursuant to 5 CFR § 5401.104.

(c) Each employee will be periodically informed of the name, address and telephone number of the Assistant Standards of Conduct Counselor to contact for advice and assistance.

(d) Employee requests for advice or rulings should be directed to the appropriate Standards of Conduct Counselor for appropriate action.

§ 105.403 Designated Agency Ethics Officials.

(a) The Designated Agency Ethics Officials, pursuant to the Ethics in Government Act of 1978, is the Deputy General Counsel. He or she may, in turn, appoint one or more an Alternate Designated Agency Ethics Officials. The Alternates will assist the Designated Agency Ethics Official and act for him or her whenever absent.

(b) The Designated Agency Ethics Officials and Alternates administer the program for Financial Disclosure Statements under 5 CFR 2634.201, receive and evaluate these statements, and provide advice and counsel regarding matters relating to the Ethics in Government Act of 1978 and its implementing regulations. The duties and responsibilities of the Designated Agency Ethics Officials and Alternates are set forth in more detail in 5 CFR 2638.203, which is promulgated and amended by the Office of Government Ethics.

Philip Lader,

Administrator.

[FR Doc. 95–28513 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 115

Surety Bond Guarantee

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: SBA proposes to revise the rules governing the Surety Bond Guarantee Program. It seeks to eliminate inconsistencies, clarify procedures, accommodate program experience and industry changes, and provide for more efficient program operation. It also seeks to clarify and shorten regulations where appropriate, eliminate redundant provisions, consolidate and reorganize sections, and clarify ambiguous language.

DATES: Written comments must be submitted on or before December 27, 1995.

ADDRESSES: Comments should be sent to David R. Kohler, Regulatory Reform Initiative Team Leader (115), U.S. Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C., 20416.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Office of Surety Guarantees, (202) 205–6540.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to all federal agencies, directing them to simplify their regulations. In response to this

directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. As a result of its review of the regulations governing the Surety Bond Guarantee Program, SBA is proposing to eliminate obsolete or redundant regulations, substantively revise others, and reorganize all of Part 115 in a more readable format.

As background, the following analysis discusses the anticipated effect of this proposed rule on SBA's current regulations.

Changes to Part 115 are being proposed which would reorganize and re-word some of the sections, and consolidate others. Sections, as well as subsections within the sections, have been reordered into a more logical sequence so that they are easier to follow. The major consolidations consist of (1) combining §§ 115.39 and 115.62 from Subparts B and C, respectively, and moving the new section to Subpart A (where provisions are applicable to both the Prior Approval and Preferred Surety Bond Programs) as new § 115.18 ''Refusal to issue further guarantees'' and (2) combining §§ 115.40 and 115.63 and moving the new section to Subpart A as new § 115.21 ''Audits and investigations.''

Substantive changes are also proposed. The most significant change is an increase in the fees paid to SBA by participating sureties and principals. This is being proposed in an attempt to make the program self-financing to overcome uncertainties and fluctuations in the funding of the program. In addition, all increases in the contract or bond amount will require the payment of additional fees by the principal and the surety, and the $40.00 threshold under which fees do not need to be paid is proposed to be eliminated. Conversely, all decreases in the contract or bond amount will require SBA to reimburse the proportionate amount of fees paid by the principal and the surety. A brief summary of the primary changes follows.

Proposed § 115.10, which sets forth definitions of terms used in this part, eliminates some current definitions, adds definitions, and changes others. ''Investment Act'' is added as a defined term for the Small Business Investment Act of 1958, as amended. ''Amount of contract'' is eliminated as a defined term and moved to § 115.12(e). ''Approval or approved'' is proposed to be deleted. ''Contract'' is clarified to mean a *written* obligation and could include an agreement to cover defective workmanship, but not defective materials, unless agreed to by SBA. ''Contractor'' is eliminated and replaced in the text of the regulations by ''Principal,'' which is already defined in the current regulations. ''Issuance or issued'' is proposed to be deleted because the meaning is vague, and replaced with ''Execution'' which more clearly pinpoints the time at which a certain action is taken. In the proposed regulations, conforming changes are made throughout the text.

The definition of ''Obligee'' would make clear that the addition of co-obligees does not increase the liability of the surety under the bond. A new term, ''Prior Approval Surety,'' would be added to refer to those sureties that are participants in SBA's program requiring prior SBA approval on guarantees. Two new definitions would be added for the guarantee agreements in the Prior Approval Program and the PSB Program: ''Prior Approval Agreement'' would be defined as the guarantee agreement (Current SBA Form 990) entered into between a Prior Approval Surety and SBA for a specific bond; ''PSB Agreement'' would be defined as the agreement authorizing a PSB Surety to participate in the PSB program.

Proposed § 115.11, ''Applying to participate in the Surety Bond Guarantee Program,'' is a new section which provides general guidance about applying to the Prior Approval and PSB programs.

Proposed §§ 115.12 (c) and (d) are currently found in § 115.10(c). The latter is proposed to be rewritten into two subsections, one concerning the ''Eligibility of Sureties'' and the other, the ''Guarantee agreement.''

Proposed § 115.12(e), ''Amount of Contract,'' is proposed to be moved from current § 115.11. This would eliminate the phrase as a defined term although the substantive provisions remain the same. Within this section, the term ''issuance'' is replaced with ''Execution'' since this substitution of terms is proposed in § 115.10.

Proposed § 115.12(f) would be a new provision which prohibits the sale or transfer of surety files or accounts. This is proposed to maintain SBA's control over the accounts in accordance with its guarantee agreement with the surety. Without this prohibition, in the event of a transfer of files or accounts, SBA might have no control over a purchaser's methods of recovery.

Proposed § 115.13(c) clarifies that a principal must certify that a bond is expressly required by the bid solicitation or the original contract.

Proposed § 115.13(e) clarifies the concept that SBA will not guarantee bonds for principals who are primarily brokers or construction managers, replacing the term ''packagers.''

Proposed § 115.13(g) is a new provision which reflects current practice. This provision states that SBA will not issue a guarantee on bonds where the surety, or any of its affiliates, close relatives or members of its household, owns 10% or more of the principal.

The substance of proposed § 115.14 ''Loss of Principal's eligibility for future assistance,'' is derived from current § 115.34, but is re-worded, and several other instances whereby a principal will be ineligible for guaranteed bonds are added. It is relocated to Subpart A so that it will apply to both the Prior Approval and the PSB Surety Bond Guarantee Programs.

Proposed § 115.15(a), currently § 115.32(a), specifies the underwriting standards to be adhered to by sureties rather than requiring sureties to consult the SOP as the current regulation does.

Proposed § 115.15(b), currently § 115.32(b) concerning servicing, imposes a new requirement that sureties monitor the progress of principals on bonded contracts guaranteed by SBA to insure that additional guarantees are not issued if there are problems with the work on hand.

Proposed § 115.16, ''Calculation of Loss,'' is a new section bringing together all provisions dealing with loss amount. ''Loss after excess contract amount'' is eliminated as a defined term and the substantive provisions moved to new §§ 115.31(d) and 115.61. ''Loss adjustment expense,'' ''Loss from litigation cost'' and ''Loss from attorneys' fees and damages'' are restructured into two paragraphs setting forth the expenses included in the calculation of loss and those that are not. The new paragraphs specify that allowable expenses must be itemized and documented and must be attributable solely to the loss under the guaranteed bond. In addition, overhead and mark-up on expenses are explicitly excluded.

Proposed § 115.17(a), currently § 115.37(a), is rewritten and relocated to Subpart A to apply to both the Prior Approval and Preferred Programs. There are also some new provisions. One prohibits sureties from separately collateralizing the non-guaranteed portion of the bond. Without this provision, a surety would have no incentive to pursue recovery since it might be able to recoup 100% of its losses from SBA and the collateral securing the unguaranteed portion. Sureties would also be prohibited from entering into an agreement by which they indemnify a principal since such

an agreement would create a conflict of interest; nor could an indemnity agreement be obtained from an agent or other representative of the surety.

Proposed § 115.17(b), currently § 115.37(c), makes clear that SBA is entitled to its guaranteed share of all salvage and recovery related to the guaranteed bond or any other bond provided by the surety on behalf of the principal.

Proposed § 115.18, ''Refusal to issue further guarantees,'' would be a consolidation of current §§ 115.39 and 115.62. In addition, the provisions in current §§ 115.39(a) and 115.62(a) that a surety may file a petition for review of certain agency actions is proposed to be modified to provide that only suspensions and terminations of surety bond guarantee participants are reviewable by the SBA Office of Hearings and Appeals.

Grounds on which SBA may deny liability are scattered throughout the current regulations. Proposed § 115.19, ''Denial of liability,'' consolidates these provisions (currently found at §§ 115.10(g), 115.13, 115.31(c)(2) and 115.64(b)), and some new ones are added. Proposed § 115.19(a), ''Excess Contract or bond amount,'' adds, as a new reason for denial of liability, the circumstance where the bond amount exceeds the contract amount.

Current §§ 115.13 (d) and (e)(2) provide that regulatory violations or alterations to a bond or contract by a surety which cause an increase in the bond liability by more than 25% or $50,000 in the aggregate, whichever is less, are grounds on which SBA may deny liability under its guarantee. Proposed §§ 115.19 (d) and (e)(2) would provide that such actions which cause an increase in bond liability of *at least* 25% or $50,000 are grounds for denying liability. Also proposed § 115.19(e)(2) provides that the sanction applies when the increase occurs *at one time* rather than in the aggregate.

Current § 115.13(c) provides that material breaches which cause an increase in the bond liability in the stated amount are grounds for denial. Proposed §§ 115.19 (c), (d) and (e) would change current §§ 115.13 (c), (d) and (e) by adding, as grounds for denial, enumerated actions which cause an increase in the *contract* amount of at least 25% or $50,000.

Proposed § 115.19(e) rewords current § 115.13(e) and allows SBA to deny liability if the surety acquiesces to a material change in the *contract,* in addition to such changes in the bond, as currently provided. Proposed § 115.19(e)(2) makes clear that this applies only to Prior Approval sureties since PSB sureties do not need SBA's approval to make alterations causing increases in the bond liability or contract amount.

Proposed §§ 115.19 (f) and (g) are moved from current §§ 115.10(g) and 115.31(c)(2), respectively. Proposed § 115.19(f) also allows SBA to deny liability if the bond was executed prior to the date of SBA's guarantee. The term ''Executed'' is used in place of ''issuance'' to conform to the changes made in proposed § 115.10 ''Definitions.''

Proposed § 115.19(h) sets forth ''other regulatory violations'' as a basis for SBA to deny liability. These provisions are moved from current § 115.64(b) and made applicable to both the Prior Approval and PSB programs.

Proposed § 115.20, ''Insolvency of Surety,'' expands on the provision currently in § 115.10(a) concerning insolvent sureties. The proposed section would provide that in the event of a surety's insolvency, any rights or benefits conferred on a surety under a valid Surety Bond Guarantee Agreement (either Prior Approval or PSB) would accrue only to the trustee or receiver of the surety and to no other party. This provision is currently stated on SBA Form 990. The proposed section would also add a new requirement that the trustee or receiver submit quarterly status reports to SBA concerning funds received and settlements under consideration. This is necessary in order to properly monitor claims and recovery situations handled by persons other than the surety.

Proposed § 115.21 is a consolidation of current §§ 115.40 and 115.63, both titled ''Audits and investigations.'' This section is placed in Subpart A since it is applicable to both Surety Bond Guarantee Programs. In addition, the provisions in current §§ 115.40(a) and 115.63(a) that a surety may file a petition for review of certain agency actions is proposed to be modified and moved into proposed § 115.18. It would provide that only suspensions and terminations of PSB sureties are reviewable by the SBA's Office of Hearings and Appeals.

Current § 115.30(b), ''Application for guarantee,'' is proposed to be deleted from the regulations and issued as internal guidance. In addition, a change would be made to require that an approved form (Current Form 1624—Lower Tier Certification form regarding debarment, etc.) be submitted for a principal with each application for a bond guarantee, not just the initial application. This change is being made to reflect the current practice and to be consistent with Part 146 of this Title (governing lobbying activities) which mandates the submission of information relative to any proposal submitted in connection with a lower tier covered transaction.

Current § 115.30(c), which provides information on the different guarantee percentages provided by SBA under the Prior Approval program, would be moved to its own section—proposed § 115.31. Section 115.31(a)(2), which would provide for a 90% guarantee for concerns owned and controlled by disadvantaged individuals, refers the reader to Part 124 of SBA regulations for information on social and economic disadvantage.

Proposed § 115.30(d) (currently §§ 115.31(c) and 115.36(f)) consolidates the time deadlines and information to be submitted to SBA when a final bond has been issued under the Prior Approval program, including bonds issued under a bonding line. The Prior Approval Agreement (SBA Form 990) would be required, rather than the Surety Bond Guarantee Review Update (Form 994C), which is currently suggested to be used when final bonds are issued under a bonding line. Because Form 990 asks for the amount of the premium being charged, and Form 994C does not, SBA can use the Form 990 for information it needs to determine the fee to be charged to the surety. This change would formalize current practice. In the case of final bonds issued other than under a bonding line, the deadline for submission of the forms would be changed from 45 days from award of the contract or issuance of the bond, to 45 days from execution of the bond. Forms for bonds issued under a bonding line would be required to be submitted within 15 days of execution. This is a technical correction to current § 115.31(c) which provides for a 45 day deadline. (The current provision is contrary to current § 115.36(f), which provides 15 days for submission to SBA of final bonds issued under a bonding line).

Proposed § 115.31(b), currently § 115.30(c)(2), clarifies that the 80% guarantee applies to contracts, not bonds, of more than $100,000.

The definition of ''Loss after excess contract amount'' which is currently under § 115.11, is proposed to be moved to § 115.31(d) and renamed ''Contract increase to over $1,250,000.''

Proposed § 115.31(e), ''Contract decrease to $100,000 or less,'' would be a new subsection that provides for an increase in SBA's guarantee percentage if the surety demonstrates that the contract amount has decreased to $100,000 or less.

Most of the provisions found at current § 115.33 are proposed to be deleted since the concepts are covered under proposed § 115.15, ''Underwriting and servicing standards.'' The prohibition against guaranteeing forfeiture bonds is proposed to be incorporated within the definition of ''Bid Bond.''

Proposed § 115.32(b), current § 115.35(b), has several changes. First, the fee charged to principals would be raised from $6.00 to $8.00 per thousand dollars of the contract amount. Because of uncertainties and fluctuations in SBA's budget, an attempt is being made to make this program self-financing. Another change involves the rounding of the principal's guarantee fee. Currently the contract amount is rounded and the fee calculated from that figure. SBA proposes to calculate the fee and then round that figure to the nearest dollar. This will eliminate cents in the fee and simplify the accounting process.

Proposed § 115.32(c), currently § 115.35(c)(1), would likewise raise the surety fee from 20% to 25% of the bond premium. In addition, § 115.32(d) would revise the notification requirement concerning increases and decreases in the contract or bond amount. The surety would be required to notify SBA of every increase or decrease, and each increase would require payment of additional fees, unlike the current requirement which mandates payment of increased fees only when the increases reach a certain threshold. When the original contract or bond amount increases at one time by more than 25% or $50,000, whichever is less, the prior written approval of the authorized SBA officer would be required on a supplemental Form 990. Approval would be conditioned on the surety's payment of the additional principal's fee. Whether there is an increase or decrease, the proposed rules eliminate the current $40.00 threshold before payment is required or reimbursed. The threshold is proposed to be eliminated for administrative convenience.

Current § 115.36(c) is proposed to be moved from the regulations as not needed and issued in internal guidance.

Proposed § 115.33(d)(1) is new. It would require sureties to submit a ''Surety Bond Guarantee Underwriting Review'' (Current Form 994B) to SBA for approval within 15 business days after execution of a bid bond under a bonding line. If this deadline is not met, this section provides that SBA's guarantee is void from its inception unless SBA determines otherwise upon a showing that a valid reason exists for the delay.

Proposed § 115.33(d)(2), which sets forth a 15 day deadline for submission of what is now Form 994B (or 994C if 994B is already on file) on final bonds, is moved from current § 115.36(f).

Proposed § 115.33(e), ''Cancellation,'' is moved from current § 115.36(h) and clarifies that the surety is required to notify SBA of any adverse information concerning a principal. Upon receipt, SBA may cancel the principal's bonding line.

Proposed § 115.34(a), ''Imminent Breach,'' would provide that the aggregate of payments made by SBA to a surety to avoid imminent breach cannot exceed 10% of the contract price. This would be a change from current § 115.37(b)(1) which provides that no payment by SBA to avoid imminent breach will exceed 10%. The current provision that the Administrator can approve payments exceeding 10%, and that in no event will SBA pay an amount exceeding its guaranteed share of the bond penalty, is likewise changed to reflect that amounts will be aggregated in determining when the Administrator's approval is needed and when SBA's guaranteed share of the bond penalty will be exceeded.

Proposed § 115.34(b), ''Salvage and recovery,'' (currently § 115.37(c)) adds a new requirement. If a surety recommends settlement to SBA or recommends that pursuit of salvage or recovery be discontinued, the surety would have to certify that pursuing recovery is neither economically feasible nor a viable strategy in maximizing recovery.

Proposed § 115.35 ''Claims for Losses,'' is based on current §§ 115.38 and 115.34, but also adds some new provisions. First, there is a requirement that the surety notify SBA within 30 days of acquiring knowledge of specified adverse circumstances concerning a principal. Another subsection requires the surety to take action to mitigate losses and expenses due to such adverse circumstances and to handle claims and suits arising from a defaulted bond. The requirement that the surety submit semiannual status reports on claims is retained, but a requirement that SBA also be notified immediately of any substantial changes, is added. Lastly, proposed § 115.35(e) provides that payment by SBA on a claim submitted by a surety does not waive or invalidate the terms of the Prior Approval Agreement or any defenses SBA may have. In addition, if SBA determines that it should not have paid any portion of a claim, the surety must reimburse SBA that amount within 30 days of being so notified.

Proposed § 115.36, ''Indemnity settlements and reinstatement of Principal,'' has two subsections taken from current § 115.34 concerning conditions for reinstatement of a principal that has become ineligible for further bond guarantees, and guidance on underwriting for a principal after reinstatement. It also has a new section on indemnity settlements, requiring a Prior Approval surety to provide SBA with certain documents relevant to making a determination on a settlement proposal. The surety would also have to obtain SBA's concurrence before agreeing to a settlement. This section retains the provision in current § 115.38 that the surety must pay SBA its *pro rata* share of the settlement amount within 90 days of receipt. A new provision is proposed which would require the surety to certify that SBA has received its share of all indemnity recovery before closing the file.

Current § 115.39, ''Refusal to issue further guarantees,'' is proposed to be combined with § 115.62, ''Qualifications of surety,'' and moved to Subpart A and renumbered § 115.18.

Current § 115.40, ''Audits and investigations,'' is proposed to be combined with § 115.63, and moved to Subpart A and renumbered § 115.21.

The information on applying to be a PSB surety currently found at § 115.60(a) is proposed to be moved to new § 115.11 which sets forth information on applying to either the Prior Approval or PSB program.

Proposed §§ 115.60 (a), (c) and (d) set forth under Subpart C the provisions stated at current §§ 115.10 (d), (e) and (f) regarding the selection of sureties for the PSB program, duration of the program and prohibition of PSB sureties against participating in the Prior Approval program. This also serves to consolidate certain information concerning the preferred program found currently in Subpart A. The sunset provision at proposed § 115.60(c) has been changed to September 30, 1997, which is when the PSB program is currently set to expire unless extended by Congress.

Proposed § 115.60(e), ''Allotment of guarantee authority,'' is moved from current § 115.60(b). The proposed subsection clarifies that where a bid bond is executed by the PSB surety and (1) the contract is awarded for an amount other than the bid amount, (2) the bid is withdrawn or (3) the bond has expired, the allotment will be debited or credited accordingly. Where the surety did not execute a related bid bond, a new provision provides that the

guarantee percentage of the penal sum of a guaranteed final bond will count against the allotment.

Proposed § 115.60(f), ''Timeliness,'' is new, and provides that a PSB surety may not execute a bond after commencement of work under a contract unless the surety receives the written approval of the Associate Administrator for Surety Guarantees.

Proposed § 115.60(g)(1), currently § 115.60(c)(1), concerning the retention of certifications and records for inspection by SBA, has a new provision requiring such documents to be retained for the term of the bond, plus time required to settle claims and an additional three years thereafter. This requirement corresponds with the current document retention requirement for purposes of SBA-conducted audits. (See current §§ 115.40(b) and 115.63(b), and proposed § 115.19(b)). The proposed section also provides that documentation must be retained until any unresolved audit findings are resolved.

Proposed § 115.60(g)(4), currently § 115.60(c)(3), would raise the PSB surety's fee and principal's guarantee fee to 25% of the premium and $8.00 per thousand dollars of the contract amount, respectively. As with the Prior Approval program, these fee increases are being recommended in an attempt to make the program self-financing.

The proposed rules at § 115.60(g)(5)(i) would eliminate the provision at current § 115.60(c)(6)(i) which requires payment of additional fees only when aggregate increases of the bond liability exceed 25% or $50,000, whichever is less. Instead, additional fees will be required to be paid on any amount of increase. Correspondingly, under proposed § 115.60(g)(5)(ii), any amount of decrease in fees will be reimbursed by SBA. These sections also make clear that the provisions apply to increases in either the contract or bond amount.

Whether there is an increase or decrease in the fees, the proposed rules eliminate the current $40.00 threshold (see current §§ 115.60(c)(6)(i) and (6)(ii)) before payment is required or reimbursed. The threshold is proposed to be eliminated for administrative convenience.

The substance of proposed § 115.61 is moved from current § 115.64(a), ''Percentage of indemnification,'' given its own section number and renamed ''Guarantee percentage.''

Current § 115.62 is proposed to be consolidated with current § 115.39, moved to Subpart A and renumbered as § 115.18.

Proposed § 115.62, ''Imminent Breach,'' is moved from current § 115.61(b) and given its own section number. A provision would be added limiting SBA's aggregate payments to PSB sureties to avoid imminent breach to 10% of the contract price. Also added is a provision that the Administrator could approve payments exceeding the 10% ceiling, and that in no event would SBA reimburse imminent breach payments in an aggregate amount exceeding its guaranteed share of the bond penalty. These are added to conform to the limitations set by statute. The current provision that SBA's guaranteed share of the aggregate of imminent breach payments and of indemnification against loss is limited to SBA's guaranteed share of the bond penalty, is proposed to be deleted. This provision is unnecessary in light of the restrictions on imminent breach payments discussed above.

Current § 115.63 is proposed to be consolidated with current § 115.40, moved to Subpart A and renumbered as § 115.21 ''Audits and investigations.''

Proposed § 115.63, ''Claims for Losses,'' would have two new subsections, taken from the Prior Approval program. Subsection (b) directs the surety to take the necessary steps for mitigation of losses and expenses and to take charge of claims and suits arising from defaulted bonds, both in a manner consistent with the surety's practices on non-guaranteed bonds. This is consistent with current practice. Subsection (c) provides that payment by SBA on a claim submitted by a surety does not waive or invalidate the terms of the PSB Agreement or any defenses SBA may have. This subsection also provides that if SBA determines that it should not have paid any portion of a claim, the surety must reimburse SBA that amount within 30 days of being so notified.

Proposed § 115.64, ''Denial of liability,'' would be moved from current § 115.64(b) and given its own section number. Redundant provisions would be deleted.

Compliance With Executive Orders 12778, 12612 and 12866, the Regulatory Flexibility Act and the Paperwork Reduction Act

SBA certifies that this proposed rule, if adopted, would not constitute a significant regulatory action for purposes of Executive Order 12866, since it is not likely to result in an annual effect on the economy of $100 million or more.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 604, SBA has determined that these rules would *not* have a significant impact on a substantial number of small entities. Although fee increases are proposed, it is SBA's opinion that the increases would not have a significant impact on either the principals or the sureties. The fees paid by principals (small business contractors requiring guaranteed bonds) would increase from $6.00 to $8.00 per thousand dollars of the contract to be bonded. Under this increase, an average contract of $161,251 would impose a fee of $1290 rather than $968, a $322 increase. A surety company typically charges a contractor a bond premium of 2.15% of the bond amount. SBA currently charges the surety 20% of the premium for SBA's guarantee. It is proposed that this fee be raised to 25%. On an average final bond, SBA's charge to the surety would increase from $694 to $867, a $173 increase.

There are no reporting, recordkeeping and other compliance requirements not approved by the Office of Management and Budget which would come under the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of Executive Order 12778.

SBA certifies that these rules do not warrant the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 115

Small business, Surety bonds.

For the above reasons, SBA proposes to revise Part 115, Title 13 of the Code of Federal Regulations, as follows:

PART 115—SURETY BOND GUARANTEE

Subpart C—Preferred Surety Bond (PSB) Guarantees

Authority: Title IV, Part B, and sections 310(a) and 311, of the Small Business Investment Act of 1958, as amended (15 U.S.C. 687b and c, 694a, 694b), the Inspector General Act of 1978 (5 U.S.C. app. 3), Pub. L. 100–590, Title II, and Pub. L. 101–574, Sec. 216.

§ 115.1 Overview of regulations.

The regulations in this part cover the SBA's Surety Bond Guarantee Programs under Part B of Title IV of the Small Business Investment Act of 1958, as amended (the Investment Act). Subpart A contains regulations common to both the program requiring prior SBA approval of each bond guarantee (the Prior Approval Program) and the program not requiring prior approval (the PSB Program). Subpart B contains the regulations applicable only to the Prior Approval Program. Subpart C contains the regulations applicable only to the PSB Program.

§ 115.2 Savings clause.

Transactions affected by this Part 115 are governed by the regulations in effect at the time they occur.

Subpart A—Provisions for all Surety Bond Guarantees

§ 115.10 Definitions.

AA/SG means SBA's Associate Administrator for Surety Guarantees.

Affiliate is defined in part 121.

Ancillary Bond means a bond incidental and essential to the performance of a Contract for which there is a guaranteed Final Bond.

Bid Bond means a bond conditioned upon the bidder on a Contract entering into the Contract, and furnishing the required Payment and Performance Bonds. The term does not include a forfeiture bond unless it is issued for a jurisdiction where statute or settled decisional law requires forfeiture bonds for public works.

Contract means a written obligation of the Principal requiring the furnishing of services, supplies, labor, materials, machinery, equipment, or construction. The term does not include a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee (e.g., a contract requiring any payment by the Principal to the Obligee), warranty of performance or efficiency, warranty of fidelity, or release of lien (other than for claims under a guaranteed bond). It can include an agreement of 2 years or less solely to cover defective workmanship. It can also include an agreement to cover defective workmanship which is ancillary to another Contract described in this paragraph if it must be performed by the same Principal, is customarily required in the relevant trade or industry, and SBA's written approval has been obtained.

Execution means signing by a representative or agent of the Surety with the authority and power to bind the Surety.

Final Bond means a Performance Bond or a Payment Bond.

Imminent Breach means a threat to the successful completion of a bonded Contract which, unless remedied by the Surety, makes a default under the bond appear to be inevitable.

Investment Act means the Small Business Investment Act of 1958, as amended.

Loss has the meaning set forth in § 115.16.

Obligee means:

(1)(i) In the case of a Bid Bond, the Person requesting bids for the performance of a Contract; or

(ii) In the case of a Final Bond, the Person who has contracted with a Principal for the completion of the Contract and to whom the primary obligation of the Surety runs in the event of a breach by the Principal.

(2) In either case, no Person (other than a Federal department or agency) may be named co-Obligee or Obligee on a bond or on a rider to the bond unless that Person is bound by the Contract to the Principal (or to the Surety, if the Surety has arranged completion of the Contract) to the same extent as the original Obligee. In no event may the addition of one or more co-Obligees increase the aggregate liability of the Surety under the bond.

OSG means SBA's Office of Surety Guarantees.

Payment Bond means a bond which is conditioned upon the payment by the Principal of money to persons who have a right of action against such bond, including those who have furnished labor, materials, equipment and supplies for use in the performance of the Contract.

Performance Bond means a bond conditioned upon the completion by the Principal of a Contract in accordance with its terms.

Person means a natural person or a legal entity.

Premium means the amount charged by a Surety to issue bonds. The Premium is determined by applying an approved rate (see §§ 115.32(a) and 115.60(a)) to the bond or contract amount. The Premium does not include surcharges for extra services, whether or not considered part of the ''premium'' under local law.

Principal means, in the case of a Bid Bond, the Person bidding for the award of a Contract. In the case of Final Bonds and Ancillary Bonds, Principal means the Person primarily liable to complete the Contract, or to make Contract-related payments to other persons, and is the Person whose performance or payment is bonded by the Surety. A Principal may be a prime contractor or a subcontractor.

Prior Approval Agreement means the Surety Bond Guarantee Agreement (SBA Form 990) entered into between a Prior Approval Surety and SBA under which SBA agrees to guarantee a specific bond.

Prior Approval Surety means a Surety which must obtain SBA's prior approval on each guarantee and which has entered into one or more Prior Approval Agreements with SBA.

PSB Agreement means the Preferred Surety Bond Guarantee Agreement entered into between a PSB Surety and SBA.

PSB Surety means a Surety that has been admitted to the Preferred Surety Bond (PSB) Program.

Surety means a company which

(1)(i) Under the terms of a *Bid Bond*, agrees to pay a sum of money to the Obligee if the Principal breaches the conditions of the bond;

(ii) Under the terms of a *Performance Bond*, agrees to pay a sum of money or to incur the cost of fulfilling the terms of a Contract if the Principal breaches the conditions of the Contract; and

(iii) Under the terms of a *Payment* or an *Ancillary Bond*, agrees to make payment to all who have a right of action against such bond, including those who have furnished labor, materials, equipment and supplies in the performance of the Contract.

(2) The term Surety includes an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of the Surety.

§ 115.11 Applying to participate in the Surety Bond Guarantee Program.

Sureties interested in participating as Prior Approval Sureties or PSB Sureties should apply in writing to the AA/SG at 409 3rd Street, SW, Washington, DC 20416. OSG will determine the

eligibility of the applicant considering its standards and procedures for underwriting, administration, claims recovery, and whether it is a corporation listed by the U.S. Treasury as eligible to issue bonds in connection with Federal procurement contracts.

§ 115.12 Program provisions.

(a) *Description of Surety Bond Guarantee Programs.* SBA guarantees Sureties participating in the Surety Bond Guarantee Programs against a portion of their Losses incurred and paid as a result of a Principal's breach of the terms of a Bid, Payment, Performance or Ancillary Bond, on any eligible Contract. A Contract must not prohibit a Surety from performing the Contract upon default of the Principal. In the Prior Approval Program, the Surety must obtain SBA's approval before a guaranteed bond can be issued. In the PSB Program, selected Sureties may issue, monitor, and service SBA guaranteed bonds without further SBA approval.

(b) *Eligibility of bonds.* Bid, Performance, and Payment Bonds (other than bonds in the nature of a financial guarantee) are eligible for an SBA guarantee if they are executed in connection with a Contract and are of a type listed in the ''Contract Bonds'' section of the current Rating Manual of the Surety Association of America (100 Wood Avenue South, Iselin, New Jersey 08830). Ancillary Bonds may also be eligible for SBA's guarantee. A Payment Bond cannot be issued unless a Performance Bond is issued at the same time. A Performance Bond must not prohibit a Surety from performing the Contract upon default of the Principal.

(c) *Expiration of Bid Bond Guarantee.* A Bid Bond guarantee expires 120 days after Execution of the Bid Bond, unless the Surety notifies SBA in writing before the 120th day that a later expiration date is required. The notification must include the new expiration date.

(d) *Guarantee agreement.* The terms and conditions of SBA's bond guarantee agreements, including the guarantee percentage, may vary from Surety to Surety, depending on past experience with SBA. If the guarantee percentage is not fixed by the Act, it is determined by OSG after considering, among other things, the rating or ranking assigned to the Surety by recognized authority, and the Surety's Loss rate, average Contract amount, average bond penalty per guaranteed bond, and ratio of Bid Bonds to Final Bonds, all in comparison with other Sureties participating in the same SBA Surety Bond Guarantee Program (Prior Approval or PSB) to a comparable degree. Any guarantee agreement under this part is made exclusively for the benefit of SBA and the Surety, and does not confer any rights (such as a right of action against SBA) or benefits on any other party.

(e) *Amount of Contract.* (1) *Statutory ceiling.* The amount of the Contract to be bonded must not exceed $1,250,000 in face value at the time of the bond's Execution.

(2) *Aggregation of Contract amounts.* The amounts of two or more Contracts for a ''single project'' are aggregated to determine the Contract amount unless the Contracts are to be performed in phases and the prior bond is released before the beginning of each succeeding phase. A bond may be considered released even if the warranty period it is covering has not yet expired. For purposes of this paragraph, a ''single project'' means one represented by two or more Contracts of one Principal or its Affiliates with one Obligee or its Affiliates for performance at the same locality, irrespective of job title or nature of the work to be performed.

(3) *Service and supply contracts.* A service or supply Contract covering more than a 1 year period is eligible if the annual Contract amount and the penal sum of the bond do not exceed $1,250,000 at any time.

(f) *Transfers or sales by Surety.* Sureties must not sell or otherwise transfer their files or accounts, whether before or after a default by the Principal has occurred. A violation of this provision is grounds for termination from participation in the program.

§ 115.13 Eligibility of Principal.

In order to be eligible for a bond guaranteed by SBA, the Principal must comply with the following requirements:

(a) *Size.* Together with its Affiliates, it must qualify as a small business under part 121 of this title.

(b) *Character.* It must possess good character and reputation. A Principal meets this standard if each owner of 20% or more of its equity, and each of its officers, directors, or general partners possesses good character and reputation. Good character and reputation is presumed absent when:

(1) Any such Person is under indictment for, or has been convicted of a felony, or a final civil judgment has been entered stating that such Person has committed a breach of trust or has violated a law or regulation protecting the integrity of business transactions or business relationships; or

(2) A regulatory authority has revoked, canceled, or suspended a license of such Person which is necessary to perform the Contract; or

(3) Any such Person has obtained a bond guarantee by fraud or material misrepresentation (as described in § 115.18(b)), or has failed to keep the Surety informed of unbonded contracts or of a contract bonded by another Surety as required by a bonding line commitment under § 115.33.

(c) *Need for bond.* It must certify that a bond is expressly required by the bid solicitation or the original Contract in order to bid on the Contract or to serve as a prime contractor or subcontractor.

(d) *Availability of bond.* It must certify that a bond is not obtainable on reasonable terms and conditions without SBA's bond guarantee assistance.

(e) *Partial subcontract.* It must certify the percentage of work under the Contract to be subcontracted. SBA will not guarantee bonds for Principals who are primarily brokers or construction managers.

(f) *Debarment.* It must certify that the Principal is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions with any Federal department or agency, under governmentwide debarment and suspension rules.

(g) *Conflict of interest.* Neither the Surety, nor an Affiliate of the Surety, or a close relative or member of the household of the Surety or Affiliate can own, directly or indirectly, 10% or more of the Principal. This prohibition also applies to ownership interests in any of the Principal's Affiliates. Where such ownership equals or exceeds 10%, SBA will not issue a guarantee.

§ 115.14 Loss of Principal's eligibility for future assistance.

(a) *Ineligibility.* A Principal and its Affiliates lose eligibility for further SBA bond guarantees if any of the following occurs:

(1) Legal action under the guaranteed bond has been initiated.

(2) The Obligee has declared the Principal to be in default under the Contract.

(3) The Surety has established a claim reserve for the bond in excess of $100.

(4) The Surety has requested reimbursement for Losses incurred under the bond.

(5) The guarantee fee has not been paid by the Principal.

(6) The Principal has committed fraud or material misrepresentation in obtaining a guaranteed bond.

(b) *Reinstatement.* Prior Approval Sureties should refer to § 115.36(b) for provisions on reinstatement of the Principal's eligibility.

§ 115.15 Underwriting and servicing standards.

(a) *Underwriting.* Sureties must evaluate the credit, capacity, and character of a Principal using standards generally accepted by the surety industry and in accordance with SBA's principles and practices and the Surety's principles and practices on unguaranteed bonds. There must be a reasonable expectation that the Principal will successfully perform the Contract to be bonded. The terms and conditions of the bond and the Contract must be reasonable in light of the risks involved and the extent of the Surety's participation. The Principal must satisfy the eligibility requirements set forth in § 115.13. The bond must satisfy the eligibility requirements set forth in § 115.12(b). The Surety and SBA must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the Contract. The Contract should be the same in type and size as those contracts previously completed by the Principal. Contracts for those who have not previously had SBA guaranteed bonds should not exceed 150% of that Principal's largest successfully completed contract. The work to be performed should be within the Principal's normal geographical area of operations and area of expertise.

(b) *Servicing.* The Surety must ensure that the Principal remains viable and eligible for SBA's Surety Bond Guarantee Program, must monitor the Principal's progress on bonded Contracts guaranteed by SBA, and must obtain job status reports from Obligees of Final Bonds guaranteed by SBA.

§ 115.16 Determination of Loss.

(a) *Loss under Bid Bond* is the lesser of the penal sum or the amount which is the difference between the bonded bid and the next higher responsive bid. In either case, the Loss is reduced by any amounts recovered by reason of the Principal's defenses against the Obligee's demand for performance by the Principal and any sums recovered from indemnitors and other salvage.

(b) *Loss under Payment Bond* is, at the Surety's option, the sum necessary to pay all just and timely claims against the Principal for the value of labor, materials, equipment and supplies furnished for use in the performance of the bonded Contract and other covered debts, or the penal sum of the Payment Bond. In either case, the Loss includes interest (if any), but Loss is reduced by any amounts recovered (through offset or otherwise) by reason of the Principal's claims against laborers, materialmen, subcontractors, suppliers, or other rightful claimants, and by any amounts recovered from indemnitors and other salvage.

(c) *Loss under Performance Bond* is, at the Surety's option, the sum necessary to meet the cost of fulfilling the terms of a bonded Contract or the penal sum of the bond. In either case, the Loss includes interest (if any), but Loss is reduced by any amounts recovered (through offset or otherwise) by reason of the Principal's defenses or causes of action against the Obligee, and by any amounts recovered from indemnitors and other salvage.

(d) *Loss under Ancillary Bond* is the amount covered by such bond which is attributable to the Contract for which guaranteed Payment or Performance Bonds were Executed.

(e) *Loss includes* the following expenses if they are itemized, documented and attributable solely to the Loss under the guaranteed bond:

(1) Amounts actually paid by the Surety which are specifically allocable to the investigation, adjustment, negotiation, compromise, settlement of, or resistance to a claim for Loss resulting from the breach of the terms of the bonded Contract. Any cost allocation method must be reasonable and must comply with generally accepted accounting principles; and

(2) Amounts actually paid by the Surety for court costs and reasonable attorney's fees incurred to mitigate any Loss under paragraphs (a) through (e)(1) of this section including suits to obtain sums due from Obligees, indemnitors, Principals and others.

(f) *Loss does not include* the following expenses:

(1) Any unallocated expenses, or any mark-up on expenses or any overhead of the Surety, its attorney, or any other party;

(2) Expenses paid for any suits, cross-claims, or counterclaims filed against the United States of America or any of its agencies, officers, or employees unless the Surety has received, prior to filing such suit or claim, written concurrence from SBA that such suit may be filed;

(3) Attorney's fees and court costs incurred by the Surety in a suit by or against SBA or its Administrator; and

(4) Fees, costs, or other payments, including tort damages, arising from a successful tort suit or claim by a Principal or any other Person against the Surety.

§ 115.17 Minimization of Surety's Loss.

(a) *Indemnity agreements and collateral.* (1) *Requirements.* The Surety must take all reasonable action to minimize risk of Loss including, but not limited to, obtaining from each Principal a written indemnity agreement which covers actual Losses under the Contract and Imminent Breach payments under § 115.34(a) or § 115.62. The indemnity agreement must be secured by such collateral as the Surety or SBA finds appropriate. Indemnity agreements from other Persons, secured or unsecured, may also be required by the Surety or SBA.

(2) *Prohibitions.* No indemnity agreement may be obtained from the Surety, its agent or any other representative of the Surety. The Surety must not separately collateralize the portion of its bond which is not guaranteed by SBA.

(b) *Salvage and recovery.* (1) *General.* The Surety must pursue all possible sources of salvage and recovery. Salvage and recovery includes all payments made in settlement of the Surety's claim, even though the Surety has incurred other losses as a result of that Principal which are not reimbursable by SBA.

(2) *SBA's share.* SBA is entitled to its guaranteed percentage of all salvage and recovery from a defaulted Principal, its guarantors and indemnitors, and any other party, received by the Surety in connection with the guaranteed bond or any other bond issued by the Surety on behalf of the Principal. The Surety must reimburse or credit SBA (in the same proportion as SBA's share of Loss) within 90 days of receipt of any recovery by the Surety.

(3) *Multiple Sureties.* In any dispute between two or more Sureties concerning recovery under SBA guaranteed bonds, the dispute must first be brought to the attention of OSG for an attempt at mediation and settlement.

§ 115.18 Refusal to issue further guarantees; suspension and termination of PSB status.

(a) *Improper surety bond guarantee practices.* (1) SBA may refuse to issue further guarantees to a Prior Approval Surety or may suspend the preferred status of a PSB Surety, by written notice stating all reasons for such decision and the effective date. Reasons for such a decision include, but are not limited to, a determination that the Surety (in its underwriting, its efforts to minimize Loss, its claims or recovery practices, or its documentation related to SBA guaranteed bonds) has failed to adhere to prudent standards or practices, including any standards or practices required by SBA, as compared to those of other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree. Acts of wrongdoing such as fraud, material misrepresentation, breach of the Prior

Approval or PSB Agreement, or regulatory violations (as defined in §§ 115.19(d) and 115.19(h)) also constitute sufficient grounds for refusal to issue further guarantees, or in the case of a PSB Surety, termination of preferred status.

(2) The failure of a Surety to consent to SBA's audit or to maintain and produce records constitutes grounds for SBA to refuse to issue further guarantees for a Prior Approval Surety, to suspend a PSB Surety from participation, and to refuse to honor claims submitted by a Prior Approval or PSB Surety until the Surety consents to the audit.

(3) SBA may also require the renegotiation of the guarantee percentage and/or SBA's charge to the Surety if a Surety experiences excessive Losses on SBA guaranteed bonds relative to those of other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree.

(b) *Lack of business integrity.* A Surety's participation in the Surety Bond Guarantee Programs may be denied, suspended, or terminated upon the occurrence of any event in paragraphs (b) (1) through (5) of this section involving any of the following Persons: the Surety or any of its officers, directors, partners, or other individuals holding at least 20% of the Surety's voting securities, and any agents, underwriters, or any individual empowered to act on behalf of any of the preceding Persons.

(1) If a State or other authority has revoked, canceled, or suspended the license required of such Person to engage in the surety business, the right of such Person to participate in the SBA Surety Bond Guarantee Program may be denied, terminated, or suspended, as applicable, in that jurisdiction or in other jurisdictions. Ineligibility or suspension from the Surety Bond Guarantee Programs is for the duration of the license suspension.

(2) If such Person has been indicted or otherwise formally charged with a misdemeanor or felony bearing on such Person's fitness to participate in the Surety Bond Guarantee Programs, the participation of such Person may be suspended pending disposition of the charge. Upon conviction, participation may be denied or terminated.

(3) If a final civil judgment is entered holding that such Person has committed a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships, participation may be denied or terminated.

(4) If such Person has made a material misrepresentation or willfully false statement in the presentation of oral or written information to SBA in connection with an application for a surety bond guarantee or the presentation of a claim, or committed a material breach of the Prior Approval or PSB Agreement or a material violation of the regulations (all as described in § 115.19), participation may be denied or terminated.

(5) If such Person is debarred, suspended, voluntarily excluded from, or declared ineligible for participation in Federal programs, participation may be denied or terminated.

(c) *Notification requirement.* The Prior Approval or PSB Surety must promptly notify SBA of the occurrence of any event in paragraphs (b) (1) through (5) of this section, or if any of the Persons described in paragraph (b) does not, or ceases to, qualify as a Surety. SBA may require submission of a Statement of Personal History from any of these Persons.

(d) *SBA proceedings.* Decisions to suspend, terminate, deny participation in, or deny reinstatement in the Surety Bond Guarantee program are made by the AA/SG. A Surety may file a petition for review of suspensions and terminations with the SBA Office of Hearings and Appeals (OHA) under part 134. SBA's Administrator may, pending a decision pursuant to Part 134, suspend the participation of any Surety for any of the causes listed in paragraphs (b) (1) through (5) of this section.

(e) *Effect on guarantee.* A guarantee issued by SBA before a suspension or termination under this section remains in effect, subject to SBA's right to deny liability under the guarantee.

§ 115.19 Denial of liability.

In addition to equitable and legal defenses and remedies under contract law, the Act and the regulations in this part, SBA is not liable under any actual or purported Prior Approval or PSB Agreement if any of the circumstances in paragraphs (a) through (h) exist.

(a) *Excess Contract or bond amount.* The total Contract amount at the time of Execution of the bond(s) exceeds $1,250,000 in face value (see § 115.12(e)), or the bond amount at any time exceeds the total Contract amount as established at the time of the bond's Execution.

(b) *Misrepresentation or fraud.* The Surety obtained the Prior Approval or PSB Agreement, or applied for reimbursement for losses, by fraud or material misrepresentation. Material misrepresentation includes (but is not limited to) both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not misleading in light of the circumstances in which it was made. Material misrepresentation also includes the adoption by the Surety of a material misstatement made by others which the Surety knew or under generally accepted underwriting standards should have known to be false or misleading. The Surety's failure to disclose its ownership (or the ownership by any owner of at least 20% of the Surety's equity) of an interest in a Principal or an Obligee is considered the omission of a statement of material fact.

(c) *Material breach.* The Surety has committed a material breach of one or more terms or conditions of its Prior Approval or PSB Agreement. A material breach is considered to have occurred if:

(1) Such breach (or such breaches in the aggregate) causes an increase in the Contract amount or in SBA's bond liability of at least 25% or $50,000, whichever is less; or

(2) One of the statutory conditions is not met.

(d) *Substantial regulatory violation.* The Surety has committed a ''substantial violation'' of SBA regulations. For purposes of this paragraph, a ''substantial violation'' is one which causes an increase in the Contract amount or SBA's bond liability of at least 25% or $50,000 in the aggregate, whichever is less, or is contrary to the purposes of the Surety Bond Guarantee Programs.

(e) *Alteration.* Without obtaining prior written approval from SBA (which may be conditioned upon payment of additional fees), the Surety agrees to or acquiesces in any material alteration in the terms, conditions, or provisions of the Contract or bond, including but not limited to the following acts:

(1) Naming as an Obligee or co-Obligee any Person that does not qualify as an Obligee under § 115.10; or

(2) In the case of a Prior Approval Surety, acquiescing in any alteration to the Contract or bond which would increase the Contract amount or SBA's bond liability by at least 25% or $50,000, whichever is less.

(f) *Timeliness.* (1) The bond was Executed prior to the date of SBA's guarantee; or

(2)(i) The bond was Executed (or approved, if the Surety is legally bound by such approval) after the work under the Contract had begun, unless SBA executes a ''Surety Bond Guarantee Agreement Addendum'' after receiving all of the following from the Surety:

(A) Satisfactory evidence, including a certified copy of the Contract (or a sworn affidavit from the Principal) showing that the bond requirement was

contained in the original job Contract, or other documentation satisfactory to SBA, showing why a bond was not previously obtained and is now being required;

(B) Certification by the Principal that all taxes and labor costs are current, and listing all suppliers and subcontractors, indicating that they are all paid to date, and attaching a waiver of lien from each; or an explanation satisfactory to SBA why such documentation cannot be produced; and

(C) Certification by the Obligee that all payments due under the Contract to date have been made and that the job has been satisfactorily completed to date.

(ii) For purposes of this paragraph (f)(2), work under a Contract is considered to have begun when a Principal takes any action at the job site which would have exposed its Surety to liability under applicable law had a bond been Executed (or approved, if the Surety is legally bound by such approval) at the time. For purposes of this paragraph (f), the Surety must maintain a contemporaneous record of the Execution and approval of each bond.

(g) *Principal fee.* The Surety has not remitted to SBA the Principal's payment for the full amount of the guarantee fee within the time period required under § 115.30(d) for Prior Approval Sureties or § 115.60(g)(4) for PSB Sureties. SBA may reinstate the guarantee upon a showing that the Contract is not in default and that a valid reason exists why a timely submission was not made.

(h) *Other regulatory violations.* (1) The Principal on the bonded Contract is not a small business;

(2) The bond was not required under the bid solicitation or the original Contract;

(3) The bond was not eligible for guarantee by SBA because the bonded contract was not a Contract as defined in § 115.10;

(4) The loss occurred under a bond that was not guaranteed by SBA;

(5) The loss incurred by the Surety was not a Loss as determined under § 115.16; or

(6) The Surety's loss did not result from the Principal's breach or Imminent Breach of the Contract for which the guaranteed bond was approved.

§ 115.20 Insolvency of Surety.

(a) *Successor in interest.* If a Surety becomes insolvent, all rights or benefits conferred on the Surety under a valid and binding Prior Approval or PSB Agreement will accrue only to the trustee or receiver of the Surety. SBA will not be liable to the trustee or receiver of the insolvent Surety except for the guaranteed portion of any Loss incurred and actually paid by such Surety or its trustee or receiver under the guaranteed bonds.

(b) *Filing requirement.* The trustee or receiver must submit to SBA quarterly status reports accounting for all funds received and all settlements being considered.

§ 115.21 Audits and investigations.

(a) *Audits.* (1) *Scope of audit.* SBA may audit in the office of a Prior Approval or PSB Surety, the Surety's attorneys or consultants, or the Principal or its subcontractors, all documents, files, books, records, tapes, disks and other material relevant to SBA's guarantee, commitments to guarantee a surety bond, or agreements to indemnify the Prior Approval or PSB Surety. See § 115.18 for consequences of failure to comply with this section.

(2) *Frequency of audits.* Each PSB Surety is audited at least once each year by examiners selected and approved by SBA.

(b) *Records.* The Surety must maintain the records listed in this paragraph for the term of each bond, plus such additional time as may be required to settle any claims of the Surety for reimbursement from SBA and to attempt salvage or other recovery, plus an additional 3 years. If there are any unresolved audit findings in relation to a particular bond, the Surety must maintain the related records until the findings are resolved. The records to be maintained include the following:

(1) A copy of the bond;

(2) A copy of the bonded Contract;

(3) All documentation submitted by the Principal in applying for the bond;

(4) All information gathered by the Surety in reviewing the Principal's application;

(5) All documentation of any of the events set forth in § 115.35(a) or § 115.60(g)(6);

(6) All records of any transaction for which the Surety makes payment under or in connection with the bond, including but not limited to claims, bills (including lawyers' and consultants' bills), judgments, settlement agreements and court or arbitration decisions, consultants' reports, Contracts and receipts;

(7) All documentation relating to efforts to mitigate Losses, including documentation required by § 115.34(a) or § 115.62 concerning Imminent Breach;

(8) All records of any accounts into which fees and funds obtained in mitigation of Losses were paid and from which payments were made under the bond, and any other trust accounts, and any reconciliations of such accounts; and

(9) All documentation relating to any collateral held by or available to the Surety.

(c) *Purpose of audit.* SBA's audit will determine, but not be limited to:

(1) The adequacy and sufficiency of the Surety's underwriting and credit analysis, its documentation of claims and claims settlement procedures and activities, and its recovery procedures and practices;

(2) The Surety's minimization of Loss, including the exercise of bond options upon Contract default; and

(3) The Surety's loss ratio in comparison with other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree.

(d) *Investigations.* SBA may conduct investigations to inquire into the possible violation by any Person of the Small Business Act or the Investment Act, or of any rule or regulation under these Acts, or of any order issued under these Acts, or of any Federal law relating to programs and operations of SBA.

Subpart B—Guarantees Subject to Prior Approval

§ 115.30 Submission of Surety's guarantee application.

(a) *Legal effect of application.* By submitting an application to SBA for a bond guarantee, the Prior Approval Surety certifies that the Principal meets the eligibility requirements set forth in § 115.13 and that the underwriting standards set forth in § 115.14 have been met.

(b) *SBA's determination.* SBA's approval or decline of a guarantee application is made in writing by an authorized SBA officer. The officer may provide telephone notice before the Prior Approval Surety's receives SBA's guarantee approval form if the officer has already signed the form. In the event of a conflict between the telephone notice and the written form, the written form controls.

(c) *Reconsideration-appeal of SBA determination.* A Prior Approval Surety may request reconsideration of a decline from the SBA officer who made the decision. If the decision on reconsideration is negative, the Surety may appeal to an individual designated by the AA/SG. If the decision is again adverse, the Surety may appeal to the AA/SG, who will make the final decision.

(d) *Notice and payment to SBA.* When the Surety has Executed a Final Bond,

including a Final Bond under a bonding line, the Surety must complete the Prior Approval Agreement, and submit the form, together with the Principal's payment for its guarantee fee (see § 115.32(b)) to SBA within 45 days, or in the case of a bonding line, within 15 business days (see § 115.33(d)) after Execution of the bond.

§ 115.31 Guarantee percentage.

(a) *Ninety percent.* SBA reimburses a Prior Approval Surety for 90% of the Loss incurred and paid if:

(1) The total amount of the Contract at the time of Execution of the bond is $100,000 or less; or

(2) The bond was issued on behalf of a small business concern owned and controlled by socially and economically disadvantaged individuals. See part 124 of this title for applicable definitions and criteria.

(b) *Eighty percent.* SBA reimburses a Prior Approval Surety in an amount not to exceed 80% of the Loss incurred and paid on bonds for Contracts in excess of $100,000 which are executed on behalf of non-disadvantaged concerns.

(c) *Contract increase to over $100,000.* Where the Contract amount, after Execution of the bond, increases to more than $100,000, the guarantee percentage decreases by one percentage point for each $5,000 of increase or part thereof, but it does not decrease below 80%. This provision applies only to guarantees which qualify under paragraph (a)(1) of this section.

(d) *Contract increase to over $1,250,000.* Where the Contract amount, after Execution of the bond, increases beyond the statutory limit of $1,250,000, SBA's share of the Loss is limited to that percentage of the increased Contract amount which the statutory limit represents, multiplied by the guarantee percentage approved by SBA. For example, if a Contract amount increases to $1,375,000, SBA's share of the Loss under an 80% guarantee is limited to 72.73% [1,250,000 / 1,375,000 = 90.91% × 80% = 72.73%].

(e) *Contract decrease to $100,000 or less.* Where the Contract amount, after Execution of the bond, decreases to $100,000 or less, SBA's guarantee percentage increases to 90% if the Surety provides SBA with evidence supporting the decrease and any other information or documents requested.

§ 115.32 Fees and Premiums.

(a) *Surety's Premium.* A Prior Approval Surety must not charge a Principal an amount greater than that authorized by the appropriate insurance department. The Surety must not require the Principal to purchase casualty or other insurance or any other services from the Surety or any Affiliate or agent of the Surety. The Surety must not charge non-Premium fees to a Principal unless the Surety performs other services for the Principal, the additional fee is permitted by State law, and the Principal agrees to the fee.

(b) *SBA charge to Principal.* SBA does not charge Principals application or Bid Bond guarantee fees. If SBA guarantees a Final Bond, the Principal must pay a guarantee fee of $8 per thousand dollars of the Contract amount (unless SBA agrees otherwise in writing). The fee is rounded to the nearest dollar. Example: If the Contract amount is $100,100, the Principal's guarantee fee is $801.00 (.008 times $100,100, or $800.80, rounded off to $801.00). The Principal's fee is to be remitted to SBA by the Surety together with the notice required under § 115.30(d). See paragraph (d) of this section for additional requirements when the Contract amount changes.

(c) *SBA charge to Surety.* SBA does not charge Sureties application or Bid Bond guarantee fees. Subject to § 115.17(a)(2), the Surety must pay SBA a guarantee fee on each guaranteed bond (other than a Bid Bond), computed at 25% of the bond Premium, in the ordinary course of business. The fee is rounded to the nearest dollar. SBA does not receive any portion of a Surety's non-Premium charges. See paragraph (d) of this section for additional requirements when the bond obligation or the Contract amount changes.

(d) *Contract or bond increases/decreases.* (1) *Notification and approval.* The Prior Approval Surety must notify SBA of any increases or decreases in the Contract or bond amount as soon as the Surety acquires knowledge of the change. Whenever the original Contract or bond amount increases by a change order of at least 25% or $50,000, whichever is less (see § 115.18(e)), the prior written approval of such increase by SBA is required on a supplemental Prior Approval Agreement and is conditioned upon payment by the Surety of the increase in the Principal's guarantee fee as set forth in paragraph (d)(2) of this section.

(2) *Increases; fees.* Notification of increases in the Contract or bond amount under this paragraph (d) must be accompanied by payment of the increase in the Principal's guarantee fee of $8 per thousand dollars of increase in the Contract amount. The Surety's check for payment of the increase in the Surety's guarantee fee of 25% of the increase in the bond Premium may be submitted in the ordinary course of business.

(3) *Decreases.* Whenever SBA is notified of a decrease in the Contract or bond amount, SBA will refund to the Principal a proportionate amount of the Principal's guarantee fee and rebate to the Surety a proportionate amount of SBA's Premium share in the ordinary course of business. Upon receipt of the refund, the Surety must promptly pay a proportionate amount of its Premium to the Principal.

§ 115.33 Surety bonding line.

A surety bonding line is a written commitment by SBA to a Prior Approval Surety which provides for the Execution of multiple bonds for a specified small business strictly within pre-approved terms, conditions and limitations. In applying for a bonding line, the Surety must provide SBA with information on the applicant as requested. In addition to the other limitations and provisions set forth in this part 115, the following conditions apply to each surety bonding line:

(a) *Underwriting.* A bonding line may be issued by SBA for a Principal only if the underwriting evaluation is satisfactory. The Prior Approval Surety must require the Principal to keep it informed of all its contracts, whether bonded by the same or another surety or unbonded, during the term of the bonding line.

(b) *Bonding line conditions.* The bonding line contains limitations on the following:

(1) The term of the bonding line, not to exceed 1 year subject to renewal in writing;

(2) The total dollar volume of the Principal's bonded and unbonded work on hand at any one time, including outstanding bids, during the term of the bonding line;

(3) The number of such contracts during the term of the bonding line;

(4) The maximum dollar amount of any single guaranteed bonded Contract;

(5) The timing of Execution of bonds under the bonding line—bonds must be dated and Executed before the work on the underlying Contract has begun, or the Surety must submit to SBA the documentation required under § 115.18(f)(2); and

(6) Any other limitation related to type, specialty of work, geographical area, or credit.

(c) *Excess bonding.* If, after a bonding line is issued, the Principal desires a bond and the Surety desires a guarantee exceeding a limitation of the bonding line, the Surety must submit an application to SBA under regular procedures.

(d) *Submission of forms to SBA.* (1) *Bid Bonds.* Within 15 business days

after the Execution of any Bid Bonds under a bonding line, the Surety must submit a ''Surety Bond Guarantee Underwriting Review'' to SBA for approval. If that form is already on file with SBA and no new financial statements are required or have been received from the Principal, a ''Surety Bond Guarantee Review Update'' may be submitted instead. If the Surety fails to submit either form within this time period, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that a valid reason exists why the timely submission was not made.

(2) *Final Bonds.* Within 15 business days after the Execution of any Final Bonds under a bonding line, the Surety must submit a signed Prior Approval Agreement and a ''Surety Bond Guarantee Underwriting Review'' to SBA for approval. If that form is already on file with SBA and no new financial statements are required or have been received from the Principal, a ''Surety Bond Guarantee Review Update'' may be submitted instead. If the Surety fails to submit these forms together with the Principal's payment for its guarantee fee within this time period, SBA's guarantee of the bond will be void from its inception unless SBA determines otherwise upon a showing that the Contract is not in default and a valid reason exists why the timely submission was not made.

(3) *Additional information.* The Surety must submit any other data SBA requests.

(e) *Cancellation of bonding line.* (1) *Optional cancellation.* Either SBA or the Surety may cancel a bonding line at any time, with or without cause, upon written notice to the other party. Upon the receipt of any adverse information concerning the Principal, the Surety must promptly notify SBA, and SBA may cancel the bonding line.

(2) *Mandatory cancellation.* Upon the occurrence of a default, whether under a contract bonded by the same or another surety or an unbonded contract, the Surety must immediately cancel the bonding line.

(3) *Effect of cancellation.* Cancellation of a bonding line by SBA is effective upon receipt of written notice by the Surety. Bonds issued before the effective date of cancellation remain guaranteed by SBA. Upon cancellation by SBA or the Surety, the Surety must promptly notify the Principal in writing.

§ 115.34 Minimization of Surety's Loss.

(a) *Imminent Breach.* (1) *Prior approval requirement.* SBA will reimburse its guaranteed share of payments made by a Surety to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond only if the payments were made with the prior approval of OSG. The Surety must demonstrate to SBA's satisfaction that the breach is, in fact, imminent and that there is no other recourse to prevent such breach.

(2) *Amount of reimbursement.* The aggregate of the payments by SBA to avoid Imminent Breach cannot exceed 10% of the Contract price, unless the Administrator finds that a greater payment (not to exceed the guaranteed share of the bond penalty) is necessary and reasonable. In no event will SBA make any duplicate payment pursuant to this or any other provision of this part 115.

(3) *Recordkeeping requirement.* The Surety must keep records of payments made to avoid Imminent Breach.

(b) *Salvage and recovery.* A Prior Approval Surety must pursue all possible sources of salvage and recovery until SBA concurs with the Surety's recommendation for a discontinuance or for a settlement. The Surety must certify that continued pursuit of salvage and recovery would be neither economically feasible nor a viable strategy in maximizing recovery. See also § 115.17(b).

§ 115.35 Claims for reimbursement of Losses.

(a) *Notification requirements.* (1) *Events requiring notification.* A Prior Approval Surety must notify OSG of the occurrence of any of the following:

(i) Legal action under the bond has been initiated.

(ii) The Obligee has declared the Principal to be in default under the Contract.

(iii) The Surety has established a claim reserve for the bond.

(iv) The Surety has received any adverse information concerning the Principal's financial condition or possible inability to complete the project or pay laborers or suppliers.

(2) *Timing of notification.* Notification must be made in writing at the time the Surety applies for a guarantee on behalf of an affected Principal or, if no guarantee application is being filed, within 30 days of the date the Surety acquires knowledge, or should have acquired knowledge, of any of the listed events.

(b) *Surety action.* The Surety must take all necessary steps to mitigate Losses resulting from any of the events in paragraph (a) of this section, including the disposal at fair market value of any collateral held by or available to the Surety. Unless SBA notifies the Surety otherwise, the Surety must take charge of all claims or suits arising from a defaulted bond, and compromise, settle and defend such suits. The Surety must handle and process all claims under the bond and all settlements and recoveries as it does on non-guaranteed bonds.

(c) *Claim reimbursement requests.* (1) Claims for reimbursement for Losses which the Surety has paid must be submitted (together with a copy of the bond, the bonded Contract, and any indemnity agreements) with the initial claim to OSG on a ''Default Report, Claim for Reimbursement and Record of Administrative Action'', within 1 year from the time of each disbursement. Claims submitted after 1 year must be accompanied by substantiation satisfactory to SBA. The date of the claim for reimbursement is the date of receipt of the claim by SBA, or such later date as additional information requested by SBA is received.

(2) The Surety must also submit evidence of the disposal of all collateral at fair market value.

(3) SBA may request additional information prior to reimbursing the Surety for its Loss.

(4) Subject to the offset provisions of part 140, SBA pays its share of Loss within 90 days of receipt of the requisite information.

(5) Claims for reimbursement and any additional information submitted are subject to review and audit by SBA, including but not limited to the Surety's compliance with SBA's regulations and the requirements of governing SBA forms.

(d) *Status updates.* The Surety must submit semiannual status reports on each claim 6 months after the initial default notice and then every 6 months. SBA must be notified immediately of any substantial changes in the status of the claim or the amounts of Loss reserves.

(e) *Reservation of SBA rights.* The payment by SBA of a Surety's claim does not waive or invalidate any of the terms of the Prior Approval Agreement, the regulations set forth in this part 115, or any defense SBA may have against the Surety. Within 30 days of receipt of notification that a claim or any portion of a claim should not have been paid by SBA, the Surety must remit the specified amounts to SBA.

§ 115.36 Indemnity settlements and reinstatement of Principal.

(a) *Indemnity settlements.* (1) An indemnity settlement occurs when a defaulted Principal and its Surety agree upon an amount, less than the actual loss under the bond, which will satisfy

the Principal's indebtedness to the Surety. Sureties must not agree to any indemnity settlement proposal or enter into any such agreement without SBA's concurrence.

(2) All settlement proposals submitted for SBA's consideration must include current financial information, including financial statements, tax returns, and credit reports, together with the Surety's written recommendations. It should also indicate whether the Principal is interested in further bonding.

(3) The Surety must pay SBA its *pro rata* share of the settlement amount within 90 days of receipt. Prior to closing the file on a Principal, the Surety must certify that SBA has received its *pro rata* share of all indemnity recovery.

(b) *Conditions for reinstatement.* At any time after a Principal becomes ineligible for further bond guarantees under § 115.36, the Surety may recommend that such Principal's eligibility for further bond guarantees be reinstated. OSG may agree to reinstate the Principal if:

(1) The Principal's guarantee fee has been paid to SBA and SBA receives evidence that the Principal has paid all delinquent amounts due to the Surety (including amounts for Imminent Breach); or

(2) The Surety has settled its claim with the Principal for an amount and on terms accepted by OSG; or

(3) The Principal contests a claim and provides collateral acceptable to the Surety and SBA, which has a liquidation value of at least the amount of the claim including related expenses; or

(4) The Principal's indebtedness to the Surety is discharged by operation of law (e.g., bankruptcy discharge); or

(5) OSG and the Surety determine that further bond guarantees will assist in the prevention or elimination of Loss to SBA.

(c) *Underwriting after reinstatement.* A guarantee application submitted after reinstatement of the Principal's eligibility is subject to a very stringent underwriting review.

Subpart C—Preferred Surety Bond (PSB) Guarantees

§ 115.60 Procedures for PSB Program.

(a) *Selection of sureties for the PSB program.* SBA's selection of PSB Sureties will be guided by, but not limited to, these factors:

(1) An underwriting limitation of at least $1,250,000 on the U.S. Treasury Department list of acceptable sureties;

(2) An agreement to charge Principals no more than the advisory premium rates of the Surety Association of America;

(3) Premium income from contract bonds guaranteed by any government agency (Federal, State or local) of no more than one-quarter of the total contract bond premium income of the Surety;

(4) The vesting of underwriting authority for SBA guaranteed bonds only in employees of the Surety;

(5) The vesting of final settlement authority for claims and recovery under the PSB program only in employees of the Surety's permanent claims department; and

(6) The rating or ranking designations assigned to the Surety by recognized authority.

(b) *Execution of PSB Agreement.* A Surety admitted to the PSB program must execute a PSB Agreement before approving SBA guaranteed bonds. No SBA guarantee attaches to bonds approved before the AA/SG or designee has countersigned the agreement.

(c) *Duration of PSB program.* The PSB program terminates on September 30, 1997, unless extended by legislation. SBA guarantees effective under this program on or before September 30, 1997, will remain in effect after such date.

(d) *Prohibition on participation in Prior Approval program.* Neither a PSB Surety nor any of its Affiliates is eligible to submit applications under subpart B of this part.

(e) *Allotment of guarantee authority.* (1) *General.* SBA allots to each PSB Surety a periodic maximum guarantee authority. No SBA guarantee attaches to bonds approved by a PSB Surety if the bonds exceed the allotted authority for the period in which the bonds are approved. No reliance on future authority is permitted. An allotment can be increased only by prior written permission of SBA.

(2) *Execution of Bid Bonds.* When the PSB Surety Executes a Bid Bond, SBA debits the Surety's allotment for an amount equal to the guarantee percentage of the estimated penal sum of the Final Bond SBA would guarantee if the Contract were awarded. If the Contract is then awarded for an amount other than the bid amount, or if the bid is withdrawn or the Bid Bond has expired (see definition in § 115.11), SBA debits or credits the Surety's allotment accordingly.

(3) *Execution of Final Bonds.* If the PSB Surety Executes a guaranteed Final Bond, but not the related Bid Bond, SBA debits the Surety's allotment for an amount equal to the guarantee percentage of the penal sum of the Final Bond. SBA will debit the allotment for increases, and credit the allotment for decreases, in the bond amount.

(4) *Release and non-issuance of Final Bonds.* The release of Final Bonds upon completion of the Contract does not restore the corresponding allotment. If, however, a PSB Surety approves a Final Bond but never issues the bond, SBA will credit the Surety's allotment for an amount equal to the guarantee percentage of the penal sum of the bond. In that event, the Surety must notify SBA as soon as possible, but in no event later than 5 business days after the non-issuance has been determined. Until the Surety has so notified SBA, it cannot rely on such credit.

(f) *Timeliness.* A PSB Surety may not Execute or approve a bond after commencement of work under a Contract unless the Surety submits a completed ''Surety Bond Guarantee Agreement Addendum'', together with the evidence and certifications described in § 115.18(f)(2), and obtains written approval from the AA/SG.

(g) *Operations.* (1) *Retention of information.* A PSB Surety must comply with all applicable SBA regulations and obtain from its applicants all the information and certifications required by SBA. The PSB Surety must document compliance with SBA regulations and retain such certifications in its files, including a contemporaneous record of the date and time of approval and Execution of each bond. The certifications and other information must be made available for inspection by SBA or its agents and must be available for submission to SBA in connection with the Surety's claims for reimbursement. The PSB Surety must retain the certifications and other information for the term of the bond, plus such additional time as may be required to settle any claims of the Surety for reimbursement from SBA and to attempt salvage or other recovery, plus an additional 3 years. If there are any unresolved audit findings in relation to a particular bond, the Surety must maintain the related certifications and other information until the findings are resolved. See also § 115.19(f).

(2) *Usual staff and procedures.* A PSB Surety must approve, Execute and administer SBA guaranteed bonds in the same manner and with the same staff as the Surety's activity outside the PSB program. The Surety must request job status reports from the Obligees in accordance with its own procedures.

(3) *Notification to SBA.* A PSB Surety must advise SBA by electronic transmission or monthly bordereau, as agreed between the Surety and SBA, of all approved Bid and Final Bonds, and of the Surety's approval of increases and

decreases in the Contract or bond amount. The notice must contain the information specified from time to time in agreements between the Surety and SBA. SBA may deny liability with respect to Final Bonds for which SBA has not received timely notice.

(4) *Fees.* The PSB Surety must pay SBA 25% of the Premium it charges on Final Bonds. The fee is rounded to the nearest dollar. The PSB Surety must also remit to SBA the Principal's payment for its guarantee fee of $8 per thousand dollars of the Contract amount. This fee is also rounded to the nearest dollar. The Surety must remit SBA's Premium share and the Principal's guarantee fee with the bordereau listing the related Final Bond, as required in the PSB Agreement.

(5) *Increases/decreases in Contract or bond amount.* (i) The PSB Surety must process Contract or bond amount increases within its allotment in the same manner as initial guaranteed bond issuances (see paragraph (g)(3) of this section). The Surety must present checks for additional fees due from the Principal and the Surety on the increases (computed under paragraph (g)(4) of this section), and attach such payments to the respective monthly bordereau.

(ii) If the Contract or bond amount is decreased, SBA will refund to the Principal a proportionate amount of the guarantee fee, and adjust SBA's Premium share accordingly in the ordinary course of business.

(6) *Events requiring notification.* The PSB Surety must advise SBA within 30 calendar days of the name and address of a Principal against whom legal action on the bond has been instituted, or when the Obligee has declared a default, or when the Surety has established a claim reserve. The Surety must also notify SBA within 30 days of the recovery of any amounts on the guaranteed bond, or if the Surety determines to bond such Principal again.

§ 115.61 Guarantee percentage.

SBA reimburses a PSB Surety in an amount not to exceed 70% of the Loss incurred and paid. Where the Contract amount, after the Execution of the bond, increases beyond the statutory limit of $1,250,000, SBA's share of the Loss is limited to that percentage of the increased Contract amount which the statutory limit represents, multiplied by the guarantee percentage approved by SBA. For an example, see § 115.31(d).

§ 115.62 Imminent Breach.

(a) *No prior approval requirement.* SBA will reimburse a PSB Surety for the guaranteed portion of payments the Surety makes to avoid or attempt to avoid an Imminent Breach of the terms of a Contract covered by an SBA guaranteed bond. The PSB Surety does not need SBA approval to make Imminent Breach payments.

(b) *Amount of reimbursement.* The aggregate of the payments by SBA cannot exceed 10% of the Contract price, unless the Administrator finds that a greater payment (not to exceed the guaranteed portion of the bond penalty) is necessary and reasonable. In no event will SBA make any duplicate payment pursuant to this or any other provision of the regulations in this part.

(c) *Recordkeeping requirement.* The PSB Surety must keep records of payments made to avoid Imminent Breach.

§ 115.63 Claims for reimbursement of Losses.

(a) *How claims are submitted.* A PSB Surety must submit claims for reimbursement on a form approved by SBA no later than 1 year from the date the Surety paid the amount. Loss is determined as of the date of receipt by SBA of the claim for reimbursement, or as of such later date as additional information requested by SBA is received. Subject to the offset provisions of part 140, SBA pays its share of Loss within 90 days of receipt of the requisite information. Claims for reimbursement and any additional information submitted are subject to review and audit by SBA.

(b) *Surety action.* The PSB Surety must take all necessary steps to mitigate Losses when legal action against a bond has been instituted, when the Obligee has declared a default, or when the Surety has established a claim reserve. When the Surety disposes of any collateral, it must do so at fair market value. Unless SBA notifies the Surety otherwise, the Surety must take charge of all claims or suits arising from a defaulted bond, and compromise, settle or defend the suits. The Surety must handle and process all claims under the bond and all settlements and recoveries in the same manner as it does on non-guaranteed bonds.

(c) *Reservation of rights.* The payment by SBA of a PSB Surety's claim does not waive or invalidate any of the terms of the PSB Agreement, the regulations in this part 115, or any defense SBA may have against the Surety. Within 30 days of receipt of notification that a claim or any portion of a claim should not have been paid by SBA, the Surety must pay the specified amounts to SBA.

§ 115.64 Denial of liability.

In addition to the grounds set forth in § 115.19, SBA may deny liability to a PSB Surety if:

(a) The PSB Surety's guaranteed bond was Executed in an amount which, together with all other guaranteed bonds, exceeded the allotment for the period during which the bond was approved, and no prior SBA approval had been obtained;

(b) The PSB Surety's loss was incurred under a bond which was not listed on the bordereau for the period when it was approved; or

(c) The loss incurred by the PSB Surety is not attributable to the particular Contract for which an SBA guaranteed bond was approved.

Dated: November 16, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28549 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 125

Government Contracting Assistance

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's Government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which should be revised or eliminated. This proposed rule would eliminate seven sections which are currently contained in 13 CFR Part 125 pertaining to SBA's procurement assistance programs. The Part would be retitled Government Contracting Assistance.

DATES: Comments must be submitted on or before December 27, 1995.

ADDRESS: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader, (125), Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, at (202) 205–6645.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to Federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which should be revised or eliminated. 13 CFR Part 125 is presently titled ''Procurement Assistance'' and consists

of 12 sections. This proposed rule would change the title to ''Government Contracting Assistance'' and would reduce the number of sections to six. SBA's regulatory review indicated that seven sections could be eliminated as unnecessary (repeating statutory provisions), obsolete, or inappropriate.

Section-by-Section Analysis

The following is a section-by-section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

Current § 125.1 is a statement of policy paraphrased from the Small Business Act (the Act). SBA proposes to eliminate this language as being unnecessary and duplicative and replace it with a brief description of the programs included in Part 125.

Current § 125.2 contains definitions such as ''Administrator,'' ''SBA,'' and ''procurement.'' The proposed rule would eliminate these definitions as unnecessary. Revised regulations on the Prime Contracting Assistance program, now found at § 125.6, would become § 125.2. These regulations have been simplified to eliminate a lengthy list of duties performed by SBA procurement center representatives and breakout procurement center representatives, which are already contained in the Act and the Federal Acquisition Regulation (FAR). In addition, the set-aside and breakout appeals procedures have been shortened to incorporate the procedures already set forth in the FAR.

Section 125.3 is presently an introduction. The proposed rule would eliminate this as unnecessary and replace it with revised regulations on the Subcontracting Assistance program now found at § 125.9. The revised subcontracting assistance regulations have been clarified and rewritten in plain language for ease of use, but no substantive changes are proposed.

Current § 125.4 is a summary of statutory provisions contained in the Act. SBA proposes to eliminate this summary as being unnecessary and duplicative. Revised regulations on the Government Property Sales Assistance program, now found at § 125.8, would become § 125.4. These regulations have been clarified and rewritten in plain language for ease of use, but no substantive changes are proposed.

The proposed rule would eliminate that portion of the current regulation which deals with size standards and rules for timber sales, since those rules are already set forth in Part 121 of this title.

On August 21, 1992, SBA published in the Federal Register (57 FR 37909) a proposed revision of 13 CFR § 125.5, SBA's regulations on the Certificate of Competency (COC) program. Due to the passage of time, and after review of all previous comments, SBA is again proposing revised regulations for comment.

The proposed rule would also make further technical changes to COC rules. It would eliminate referrals to SBA for eligibility determinations under the Walsh-Healey Public Contracts Act (WHPCA) (previously proposed § 125.5(d)). Section 7201 of the Federal Acquisition Streamlining Act of 1994 (FASA) repealed the ''regular dealer'' or ''manufacturer'' eligibility requirements imposed by WHPCA for offerors on contracts subject to the Act.

This proposed rule would change the $25,000 threshold (under which a contracting officer has no right to appeal an initial affirmative COC decision to SBA Headquarters) referenced in § 125.5(b)(11) of the previously proposed COC regulation to dollar values that coincide with either contracting actions valued under $100,000, or the use of Simplified Acquisition Threshold (SAT) procedures implemented under FASA.

The proposed rule would also make some minor technical edits to SBA's earlier proposed rule dealing with the COC program. The following substitutions have been made from the rule as originally proposed: (1) references to the Office of Procurement Assistance have been changed to the Office of Government Contracting; (2) references to the Associate Administrator for Procurement Assistance have been changed to the Associate Administrator for Government Contracting; (3) references to Regional Administrators have been deleted; (4) references to the Assistant Regional Administrator for Procurement Assistance have been changed to Area Director for Government Contracting.

The proposed rule would also make several changes to the Prime Contractor Performance Requirements (Limitations on Subcontracting), which were earlier proposed as part of the COC regulatory package published for public comment on August 21, 1992 (57 FR 37909). This proposed rule would separate those provisions into a separate section 125.6, since the provisions have applicability outside the COC process. The comments, however, relate back to the COC proposal as published on August 21, 1992.

A commenter to that rule suggested that SBA make it clear that this section applies to both the DoD Small Disadvantaged Business (SDB) set aside program, including the SDB 10% evaluation preference, and SBA's MED (8(a)) program. SBA agrees and has revised the earlier proposed regulation accordingly.

Another comment suggested clarification of the applicability of this requirement to sealed bidding situations. Since the ''limitations on subcontracting'' requirement applies to negotiated and formally advertised procurements as well as to procurements under the Simplified Acquisition Threshold, SBA considers it unnecessary to state this again in the regulation. In the case of a formally advertised procurement, compliance with the requirement will be determined after bid opening and before contract award through the procuring agency's preaward evaluation procedures. This requirement applies only to small business set-asides or that portion of a procurement set aside for small business.

A comment suggested that the regulation address the need for SBA to evaluate compliance with this requirement for the base period and all option periods of a contract. SBA has not revised the regulation since a failure to comply with the requirement in the course of contract performance is considered to be a material breach of contract. Contracting officers already have remedies to assure compliance with the requirement.

Another comment suggested that SBA clarify that the term ''materials'' includes purchases made by a small business which are ''normal commercial practices within the industry.'' SBA has revised the regulation to include normal commercial practices within the industry.

Another comment suggested that SBA clarify whether Government-specified sources referenced within a solicitation are included in the definition of ''cost of materials.'' SBA has not changed the regulation in response to this comment because the definition of ''subcontracting'' in § 125.5(c)(4)(vii) states that where the prime contractor has been directed by the Government to utilize a specific source, the costs associated with such a purchase will be considered as the cost of materials.

One commenter suggested that a separate definition for ''off-the-shelf'' items should be added to this section. SBA has adopted this suggestion.

Finally, a commenter suggested that SBA clarify the use of ''part-time'' employees in the definition of ''personnel'' in this section rather than reference § 121.404 of this Title. SBA has not adopted this suggestion because the definition of ''employee'' in SBA's size regulations at part 121 includes part-time employees.

SBA proposes to eliminate in its entirety current § 125.7 which deals with Defense Production Pools. Although such Pools continue to be authorized by statute, their formation is such a rare event that it is unnecessary to have a separate regulation on the subject when it can be adequately dealt with on a case-by-case basis.

SBA also proposes to delete in its entirety current § 125.10 dealing with the Procurement Automated Source System (PASS). Since this computerized information data base on small business contractors is governed by contractual provisions, it is unnecessary to have a separate regulation on the topic.

The proposed rule would eliminate § 125.11 which describes the Technology Assistance Program. This program has been administratively discontinued and is no longer in operation.

Current § 125.12 describes the Natural Resources Development Program or ''tree-planting program.'' SBA would eliminate this section as obsolete since Congress no longer provides funds for this program.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U. S. C. 601, et seq. This rule would eliminate seven sections of SBA's regulations that SBA has determined to be obsolete, unnecessary, or duplicative. The remaining regulations have been rewritten for clarity and ease of use. No contracting opportunities for small business would be affected by this proposed rule. Therefore, it is not likely to have an annual economic impact of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 125

Government contracts; Government procurement; Reporting and recordkeeping requirements; Small businesses; Technical assistance.

For the reasons set forth above, SBA proposes to revise Part 125 of Title 13 of the Code of Federal Regulations as follows:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

Sec.

Authority: 15 U.S.C. 634(b)(6), 637, and 644; 31 U.S.C. 9701, 9702.

§ 125.1 Programs included.

The regulations in this part relate to the Government contracting assistance programs of SBA. There are four main programs: Prime contracting assistance; Subcontracting assistance; Government property sales assistance; and the Certificate of Competency program. The objective of the programs is to assist small businesses in obtaining a fair share of Federal Government contracts, subcontracts, and property sales.

§ 125.2 Prime contracting assistance.

(a) *Traditional PCR responsibilities.* (1) SBA Procurement Center Representatives (PCRs) are located at Federal agencies and buying activities which have major contracting programs. PCRs review all acquisitions not set aside for small businesses to determine whether a set-aside would be appropriate. In cases where there is disagreement between a PCR and the contracting officer over the suitability of a particular acquisition for a small business set-aside, the PCR may initiate an appeal to the head of the contracting activity. If the head of the contracting activity agrees with the contracting officer, SBA may appeal to the secretary of the department or head of the agency. The procedures and time limits for such appeals are set forth in § 19.505 of the Federal Acquisition Regulation (FAR). (48 CFR 19.505).

(2) PCRs review and evaluate the small business programs of Federal agencies and buying activities and make recommendations for improvement. They also recommend small business, small women-owned business, and small disadvantaged business sources for use by contracting activities and assist these businesses in obtaining Federal contracts and subcontracts. Other authorized duties of a PCR are set forth in the FAR in 48 CFR 19.402(c) and in the Small Business Act in Section 15(a) (15 U.S.C. 644(a)).

(b) *BPCR responsibilities.* (1) SBA is required by section 403 of Public Law 98–577 to assign a breakout PCR (BPCR) to major contracting centers. A major contracting center is a center that, as determined by SBA, purchases substantial dollar amounts of other than commercial items, and which has the potential to achieve significant savings as a result of the assignment of a BPCR.

(2) BPCRs advocate full and open competition in the Federal contracting process and recommend the breakout for competition of items and requirements which previously have not been competed. They may appeal the failure by the buying activity to act favorably on a recommendation in accord with the appeal procedures set forth in § 19.505 of the FAR (48 CFR 19.505). BPCRs also review restrictions and obstacles to competition and make recommendations for improvement. Other authorized functions of a BPCR are set forth in 48 CFR 19.403(c) of the FAR and Section15(l) of the Small Business Act (15 U.S.C. 644(l)).

§ 125.3 Subcontracting assistance.

(a) The purpose of the subcontracting assistance program is to achieve maximum utilization of small business by major prime contractors. The Small Business Act requires other than small firms awarded contracts by the Federal Government in excess of $500,000, or $1 million for construction of a public facility, to submit a subcontracting plan to the contracting agency. The FAR sets forth the requirements for subcontracting plans in 48 CFR subpart 19.7 and 48 CFR 52.219–9.

(b) Upon determination of the successful subcontract offeror, but prior to award, the prime contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror. This is applicable to all subcontracts over $10,000.

(c) SBA Commercial Market Representatives (CMRs) facilitate the process of matching large prime contractors with small, small disadvantaged, and small women-owned subcontractors. CMRs identify, develop, and market small businesses to the prime contractors and assist the small firms in obtaining subcontracts.

(d) Each CMR has a portfolio of prime contractors and conducts periodic

compliance reviews and needs assessments of the companies in this portfolio. CMRs are also required to perform opportunity development and source identification. Opportunity development means assessing the current and future needs of the prime contractors. Source identification means identifying those small, small disadvantaged, and small women-owned firms which can fulfill the needs assessed from the opportunity development process.

(e) CMRs offer additional assistance to small businesses: (1) Advice to representatives of small firms interested in obtaining subcontracts from Federal prime contractors;

(2) Information and assistance on how to identify subcontract opportunities and what opportunities are currently available; and

(3) Information and assistance on the qualifications required to become eligible for inclusion on potential source listings of large firms for future subcontract requirements.

(f) CMRs also perform the following duties:

(1) Assisting both Government agencies and prime contractors in the formulation of subcontracting plans and providing contractors with potential sources to help them comply with their plans;

(2) Assisting PCRs, upon request, in reviewing subcontracting plans submitted by prime contractors prior to contract award;

(3) Evaluating compliance by contractors with the contract clause entitled ''Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns'';

(4) Recommending small, small disadvantaged, and small women-owned firms to prime contractors and Government agencies for performance of subcontract requirements; and

(5) Maintaining liaison and contact with prime contractors to assist in advance procurement planning and to foster increased utilization of small businesses.

§ 125.4 Government property sales assistance.

(a) The purpose of SBA's Government property sales assistance program is to:

(1) Insure that small businesses obtain their fair share of all Federal real and personal property qualifying for sale or other competitive disposal action; and

(2) Assist small businesses in obtaining Federal property being processed for disposal, sale, or lease.

(b) SBA property sales assistance primarily consists of two activities:

(1) Obtaining small business set-asides when necessary to insure that a fair share of Government property sales are made to small businesses; and

(2) Providing advice and assistance to small businesses on all matters pertaining to sale or lease of Government property.

(c) The program is intended to cover the following categories of Government property:

(1) Sales of timber and related forest products;

(2) Sales of strategic material from national stockpiles;

(3) Sales of royalty oil by the Department of Interior's Minerals Management Service;

(4) Leases involving rights to minerals, petroleum, coal, and vegetation; and

(5) Sales of surplus real and personal property.

(d) SBA has established specific small business size standards and rules for the sale or lease of the different kinds of Government property. These provisions are contained in §§ 121.501 through 121.514 of this title.

§ 125.5 Certificate of Competency Program.

(a) *General.* (1) The Certificate of Competency (COC) Program is authorized under section 8(b)(7) of the Small Business Act. A COC is a written instrument issued by SBA to a Government contracting officer, certifying that one or more named small business concerns possess the responsibility to perform a specific Government procurement (or sale) contract. The COC Program is applicable to all Government procurement actions.

(2) A contracting officer must, upon determining a low responsive small business offeror to be nonresponsible, refer that small business to SBA for a possible COC, even if the next low responsive offeror is also a small business.

(3) A small business offeror referred to SBA as nonresponsible may apply to SBA for a COC.

(b) *COC Eligibility.* (1) The offeror seeking a COC has the burden of proof to demonstrate its eligibility for COC review. To be eligible for the COC program, a firm must meet the following criteria:

(i) It must qualify as a ''small business concern'' under the size standard applicable to the procurement. Where the solicitation fails to specify a size standard or Standard Industrial Classification (SIC) code, SBA will assign the appropriate size standard to determine COC eligibility. SBA determines size eligibility as of the date described in § 121.404 of this title.

(ii) A manufacturing, service, or construction concern must demonstrate that it will perform a significant portion of the proposed contract with its own facilities, equipment, and personnel. The contract must be performed or the end item manufactured within the United States, its territories, possessions, or the Commonwealth of Puerto Rico.

(iii) A non-manufacturer making an offer on a small business set-aside contract for supplies must furnish end items that have been manufactured in the United States, its territories, possessions, or the Commonwealth of Puerto Rico by a small business. Non-manufacturing concerns may apply for a waiver of this requirement under §§ 121.1301 through 121.1305 of this title for either the type of product being procured or the specific contract at issue.

(iv) A non-manufacturer submitting an offer on a procurement utilizing simplified acquisition threshold procedures with a cost that does not exceed $25,000, or on any unrestricted procurement, must furnish end items manufactured in the United States, or its trust territories, possessions, or the Commonwealth of Puerto Rico. Any COC shall apply to the responsibility of the non-manufacturer, not to that of the manufacturer.

(v) An offeror intending to provide a kit consisting of finished components or other components provided for a special purpose, is eligible if:

(A) It meets the Size Standard for the SIC code assigned to the procurement; and

(B) More than 50% of the total dollar value of the components of the kit were manufactured by small businesses under the size standard applicable to the component provided. The offeror need not itself be the manufacturer of any of the components of the kit. Each component comprising the kit must be produced or manufactured in the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico. Where the Government has specified any item for the kit which is not manufactured by a small business, then such item shall be excluded from the determination of total value for the purposes of this section.

(2) SBA will determine a concern ineligible for a COC if the concern, or any of its principals, appears in the ''Parties Excluded From Federal Procurement Programs'' section found in the U.S. General Services Administration Office of Acquisition Policy Publication: List of Parties Excluded From Federal Procurement or Nonprocurement Programs. If a principal is unable to presently control the applicant concern, and appears in

the Procurement section of the list due to matters not directly related to the concern itself, responsibility will be determined in accordance with paragraph (c)(9) of this section.

(3) An eligibility determination will be made on a case by case basis, where a concern or any of its principals appears in the Nonprocurement Section of the publication referred to in paragraph (b)(2) of this section.

(c) *Referral of nonresponsibility determination to SBA.* (1) A contracting officer who determines that an apparently successful offeror that has certified itself to be a small business with respect to a specific Government contract lacks any element of responsibility (including competency, capability, capacity, credit, integrity or tenacity or perseverance) must refer the matter in writing to the SBA Government Contracting Area Office (Area Office) serving the area in which the headquarters of the offeror is located. The referral must include a copy of the following:

(i) Solicitation;

(ii) Offer submitted by the concern whose responsibility is at issue for the procurement (as of Best and Final Offers for a negotiated procurement, and as of bid opening for a sealed bid procurement);

(iii) Abstract of Bids, where applicable, or the Contracting Officer's Price Negotiation Memorandum;

(iv) Preaward survey, where applicable;

(v) Contracting officer's written determination of non-responsibility;

(vi) Technical data package (including drawings, specifications, and Statement of Work); and

(vii) Any other justification and documentation used to arrive at the nonresponsibility determination.

(2) Contract award must be withheld by the contracting officer for a period of 15 working days (or longer if agreed to by SBA and the contracting officer) following receipt by the appropriate Area Office of a referral which includes all required documentation.

(3) The COC referral must indicate that the offeror has been found responsive to the solicitation, but at the same time must identify the reasons for the nonresponsibility determination.

(d) *Application for COC.* (1) Upon receipt of the contracting officer's referral, the SBA Area Office will inform the concern of the contracting officer's negative responsibility determination, and offer it the opportunity to apply to SBA for a COC by a specified date.

(2) The COC application must include all information and documentation requested by SBA and any additional information which the firm believes will demonstrate its ability to perform on the proposed contract. The application should be returned as soon as possible, but no later than the date specified by SBA.

(3) Upon receipt of a complete and acceptable application, SBA may elect to visit the applicant's facility to review its responsibility. Where a service or construction contract will be performed outside the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico, SBA will rely solely on documentation and other relevant information obtained within the United States. SBA personnel may obtain clarification or confirmation of information provided by the applicant by directly contacting suppliers, financial institutions, and other third parties upon whom the applicant's responsibility depends.

(e) *Incomplete applications.* If an application for a COC is materially incomplete or is not submitted by the date specified by SBA, SBA will close the case and so notify the contracting officer. The basis for its decision will be specified in a declination letter sent to both the concern and the contracting officer.

(f) *Reviewing an application.* (1) The COC review process is not limited to the areas of nonresponsibility cited by the contracting officer. SBA may, at its discretion, independently evaluate the COC applicant for all elements of responsibility, but it may presume responsibility exists as to elements other than those cited as deficient. SBA may deny a COC for reasons of nonresponsibility not originally cited by the contracting officer.

(2) A small business will be rebuttably presumed nonresponsible if any of the following circumstances are shown to exist:

(i) Within three years before the application for a COC, the concern, or any of its principals, has been convicted of an offense or offenses that would constitute grounds for debarment or suspension under FAR subpart 9.4 (48 CFR Subpart 9.4), and the matter is still under the jurisdiction of a court (e.g., the principals of a concern are incarcerated, on probation or parole, or under a suspended sentence); or

(ii) Within three years before the application for a COC, the concern or any of its principals has had a civil judgment entered against it or them for any reason that would constitute grounds for debarment or suspension under FAR subpart 9.4 (48 CFR Subpart 9.4).

(g) *Decision by Area Director.* After reviewing the information submitted by the applicant and the information gathered by SBA, the Director will make a determination, either final or recommended as set forth in the following chart:

Contracting actions	SBA official or office with authority to make decision	Finality of decision; options for contracting agencies
$100,000 or less, or in accordance with Simplified Acquisition Threshold procedures.	Director may approve or deny	Final. The Director will notify both the applicant and contracting agency in writing of the decision.
Between $100,000 and $25 million.	(1) Director may deny. (2) Director may approve, subject to right of appeal and other options.	(1) Final. (2) Contracting agency may proceed under paragraph (h) or paragraph (1) of this section.
Exceeding $25 million	(1) Director may deny (2) Director must refer to SBA Headquarters recommendation for approval.	(1) Final. (2) Contracting agency may proceed under paragraph (j) of this section.

(h) *Notification of intent to issue on a contract with a value between $100,000 and $25 million.* Where the Director determines that a COC is warranted, he or she will notify the contracting officer of the intent to issue a COC, and of the reasons for that decision, prior to issuing the COC. At the time of notification, SBA will give the contracting officer the following options:

(1) Accept the Director's decision to issue the COC and award the contract to the concern (the issuance letter will

include as an attachment a detailed rationale of the decision); or

(2) Ask the Director to suspend the case:

(i) for a specified period of time, and to forward a detailed rationale for the decision to the contracting officer; or

(ii) to afford the contracting officer the opportunity to meet with the Area Office to review all documentation contained in the case file; or

(iii) to submit any information which the contracting officer believes SBA has not considered (at which time, SBA will establish a new suspense date mutually agreeable to the contracting officer and SBA); or

(iv) to permit resolution of an appeal by the contracting agency to SBA Headquarters under pargraph (i) of this section.

(3) After any discussions under paragraph (h)(2) of this section, the Director will issue the determination.

(i) *Appeals of Area Director determinations.* For COC actions with a value exceeding $100,000, contracting agencies may appeal a Director's decision to issue a COC to SBA Headquarters by filing an appeal with the Area Office processing the COC application. The Area Office must honor the request to appeal if the contracting officer agrees to withhold award until the appeal process is concluded. Without such an agreement from the contracting officer, the Director will issue the COC. When such an agreement has been obtained, the Area Office will immediately forward the case file to SBA Headquarters.

(1) The intent of the appeal procedure is to allow the contracting agency the opportunity to submit to SBA Headquarters any documentation which the contracting officer believes the Area Office has not considered.

(2) SBA Headquarters will furnish written notice to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) at the secretariat level of the procuring agency (with a copy to the contracting officer), that the case file has been received and that an appeal decision may be requested by an authorized official at that level. If the contracting agency decides to file an appeal, it must notify SBA Headquarters through its Director, OSDBU, within 10 working days (or a time period agreed upon by both agencies) of its receipt of the notice under paragraph (h) of this section. The appeal and any supporting documentation must be filed within 10 working days (or a different time period agreed to by both agencies) after SBA receives the request for a formal appeal. The SBA Associate Administrator for Government Contracting (AA/GC) will make a final determination, in writing, to issue or to deny the COC.

(j) *Decision by SBA Headquarters where contract value exceeds $25 million.* (1) Prior to taking final action, SBA Headquarters will contact the contracting agency at the secretariat level or agency equivalent and afford it the following options:

(i) Ask SBA Headquarters to suspend the case so that the agency can meet with Headquarters personnel and review all documentation contained in the case file; or

(ii) Submit to SBA Headquarters for evaluation any information which the contracting agency believes has not been considered.

(2) After reviewing all available information, the AA/GC will make a final decision to either issue or deny the COC. If the AA/GC's decision is to deny the COC, the applicant and contracting agency will be informed in writing by the Area Office. If the decision is to issue the COC, a letter certifying the responsibility of the firm will be sent to the contracting agency by Headquarters and the applicant will be informed of such issuance by the Area Office. Except as set forth in paragraph (l) of this section, there can be no further appeal or reconsideration of the decision of the AA/GC.

(k) *Notification of denial of COC.* The notification to an unsuccessful applicant following either an Area Director or a Headquarters denial of a COC will briefly state all reasons for denial and inform the applicant that a meeting may be requested with appropriate SBA personnel to discuss the denial. Upon receipt of a request for such a meeting, the appropriate SBA personnel will confer with the applicant and explain the reasons for SBA's action. The meeting does not constitute an opportunity to rebut the merits of the SBA's decision to deny the COC, and is for the sole purpose of giving the applicant the opportunity to correct deficiencies so as to improve its ability to obtain future contracts either directly or, if necessary, through the issuance of a COC.

(l) *Reconsideration of COC after issuance.* (1) An approved COC may be reconsidered and possibly rescinded, at the sole discretion of SBA, in the following circumstances:

(i) If, after issuance of a COC, but before award of any contract in reliance upon such COC, SBA discovers that:

(A) the COC applicant submitted false or omitted material information; or

(B) new materially adverse information has appeared relating to the current responsibility of the applicant concern; or

(ii) Where the contract for which a COC has been issued has not been awarded within 60 days (in which case SBA may investigate the firm's current circumstances).

(2) Where SBA reaffirms the COC, the procedures under paragraph (h) of this section do not apply.

(m) *Effect of COC Certification.* By the terms of the Small Business Act, a COC is conclusive as to responsibility. Where SBA issues a COC on behalf of a small business with respect to a particular contract, contracting officers are required to award the contract without requiring the firm to meet any other requirement with respect to responsibility.

(n) *Non-Certification.* Denial of a COC by SBA does not preclude a contracting officer from awarding a contract to the referred firm.

(o) *Monitoring performance.* Once a COC has been issued and a contract awarded on that basis, SBA will monitor contractor performance.

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

(a) In order to be awarded a small business set-aside, a partial set-aside, an 8(a) contract, or an unrestricted procurement where a concern has claimed a 10 percent SDB price evaluation preference, a small business concern must agree that:

(1) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees.

(2) In the case of a contract for supplies or products (other than procurement from a regular dealer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials).

(3) In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials).

(4) In the case of a contract for construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).

(b) *Definitions.* The following definitions apply to this section:

(1) *Cost of the Contract.* All allowable direct and indirect costs allocable to the contract, excluding profit or fees.

(2) *Cost of contract performance incurred for personnel.* Direct labor costs and any overhead which has only

direct labor as its base, plus the concern's General and Administrative rate multiplied by the labor cost.

(3) *Cost of manufacturing.* Those costs incurred by the firm in the production of the end item being acquired. These are costs associated with the manufacturing process, including the direct costs of fabrication, assembly, or other production activities, and indirect costs which are allocable and allowable. The cost of materials, as well as the profit or fee from the contract, are excluded.

(4) *Cost of materials.* Includes costs of the items purchased, handling and associated shipping costs for the purchased items (which includes raw materials), off-the-shelf items (and similar proportionately high-cost common supply items requiring additional manufacturing or incorporation to become end items), special tooling, special testing equipment, and construction equipment purchased for and required to perform on the contract. In the case of a supply contract, the acquisition of services or products from outside sources following normal commercial practices within the industry are also included. In addition, where the services of a public or private utility company are obtained for the lease and use of distribution facilities such as telecommunications circuits, petroleum or natural gas pipelines, or electric transmission lines in connection with the performance of a contract, the acquisition of those services will also be considered as cost of materials.

(5) *Off-the-shelf item.* An item produced and placed in stock by a manufacturer, or stocked by a distributor, before orders or contracts are received for its sale. The item may be commercial or may be produced to military or Federal specifications or description. Off-the-shelf items are also known as Nondevelopmental Items (NDI).

(6) *Personnel.* Individuals who are ''employees'' under § 121.106 of this title.

(7) *Subcontracting.* That portion of the contract performed by a firm, other than the concern awarded the contract, under a second contract, purchase order, or agreement for any parts, supplies, components, or subassemblies which are not available off-the-shelf, and which are manufactured in accordance with drawings, specifications, or designs furnished by the contractor, or by the government as a portion of the solicitation. Raw castings, forgings, and moldings are considered as materials, not as subcontracting costs. Where the prime contractor has been directed by the Government to use any specific source for parts, supplies, components subassemblies or services, the costs associated with those purchases will be considered as part of the cost of materials, not subcontracting costs.

(c) SBA will determine compliance with the Prime Contractor Performance Requirements (Requirements) as of the following dates:

(1) In a sealed bid procurement, as of the date the bid was submitted;

(2) In a negotiated procurement, as of the date the concern submits its best and final offer. If a concern is determined not to be in compliance at the time it submits its best and final offer, it may not come into compliance later for that procurement by revising its subcontracting plan.

(d) The Requirements will be considered an element of responsibility and not a component of size eligibility.

(e) The base contract period (excluding any options) will be used to determine compliance with the Requirements.

(f) Work to be performed by subsidiaries or other affiliates of a concern is not counted as being performed by the concern for purposes of determining whether the concern will perform the required percentage of work.

(g) The procedures of § 125.5 apply where the contracting officer determines non-compliance with the requirements applicable to small business set-aside or SDB-related procurements, and refers the matter to SBA for a COC determination.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28515 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Parts 132 and 134

Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. The regulations proposed here would reorganize all but one of the regulations pertaining to procedures before the Office of Hearings and Appeals (''OHA'') and consolidate them in one part. In addition, the proposed regulations would clarify, simplify, and significantly shorten the existing regulations governing OHA. Finally, a number of substantive changes are proposed.

DATES: Comments must be submitted on or before December 27, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader, Attention: Part 134, U.S. Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Gary Fox, Chief Counsel for Special Litigation, at (202) 205–6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to Federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would consolidate all the existing regulations governing proceedings before OHA into part 134 with the exception of proceedings under the Program Fraud Civil Remedies Act, which would be covered in part 142 of this chapter. It would also clarify, simplify and revise the current rules, reorganize sections for ease of use, and eliminate unnecessary provisions.

As background, the following analysis discusses the anticipated effect of this proposed rule on SBA's current regulations.

The proposed rule would be divided into four subparts. Subpart A would contain general rules (currently subpart A). Subpart B (currently subpart B and §§ 124.210 and 124.211 (d) through (i)) would contain rules of practice applicable to all cases before OHA except size and SIC code appeals and proceedings under the Program Fraud Civil Remedies Act. Subpart C would contain the rules applicable to size and SIC code appeals (currently §§ 121.1701–1722). Subpart D would contain the rules for implementation of the Equal Access to Justice Act, currently contained in part 132. Proceedings covered by the Program Fraud Civil Remedies Act would continue to be contained in part 142 of this chapter.

A number of policy changes are also proposed. OHA's jurisdiction would be expanded to include cases brought under the Age Discrimination Act. At the same time, its jurisdiction would be narrowed to exclude contractor debarment and suspension proceedings, employee formal stage grievances,

arbitrations concerning labor agreements, and certain civil rights cases.

The service and filing requirements would be simplified considerably. Certification requirements and format requirements would be eliminated. The requirement that submissions be filed and served by certified or registered mail would be deleted, and the time limits for filing petitions and answers would be simplified and made uniform for all types of proceedings to the extent possible. In addition, the reviewing official on requests for review of all initial OHA decisions would be SBA's Administrator or his or her designee.

The proposed rule would expand the rights of parties in a number of ways. The rule would stay the time to answer a petition when a motion for summary decision is filed. The section on intervention would be broadened. The use of alternative dispute resolution procedures would be authorized where all parties consented. Finally, a number of time limits would be enlarged for the benefit of the public.

The proposed rule would also modify the rights of parties in a number of respects in the interests of efficiency and uniformity, and to conserve limited resources. For proceedings other than size and SIC code appeals, an oral hearing would not be granted unless there was a genuine dispute as to a material fact that could not be resolved except by the taking of testimony and the confrontation of witnesses. Oral hearings would not be permitted at all in SIC code appeals, and would be permitted in size appeals only under extraordinary circumstances. Discovery would be permitted in cases other than size, SIC code, and certain MED appeals only where a showing of good cause was made. No discovery would be permitted in size or SIC code appeals, and limited discovery would be permitted in certain MED appeals. There would no longer be an absolute right to review by OHA of a size determination. Instead, OHA would decide in its discretion whether to consider the appeal. Evidence would not be admitted in size appeals unless directed by the Judge. A size determination by an Area Office would be upheld unless the Judge found clear error of fact or law. Finally, the right to file motions for reconsideration of a Judge's decision in size and SIC code cases would be eliminated.

Subpart D would be reorganized, condensed, and rewritten in plain language. The text would be presented in a question and answer format for clarity and ease of use. Minimal substantive changes are proposed to clarify existing ambiguities and eliminate obsolete directions or references.

Section-by-Section Analysis

The following is a section by section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

Proposed § 134.101 would provide that the rules in this part would govern the conduct of cases before OHA.

Proposed § 134.102 would provide definitions applicable to all subparts within part 134. Many of the definitions in current § 134.2 would be shortened and simplified. Some definitions would be deleted as unnecessary; others would be added with the incorporation of portions of parts 121 and 124 into part 134. Minor language changes would also be made. The definition of ''hearing'' would clarify that a hearing may or may not include live testimony or argument. The definition of ''Judge'' would be expanded to include the Assistant Administrator for Hearings and Appeals (''AA/OHA'') when acting in the capacity of an Administrative Judge. The definition of ''pleading'' would be narrowed to include only the petition, appeal, answer, or any supplement or amendment to these documents. The current rule defines ''pleading'' to include all submissions other than documentary or testimonial evidence.

Proposed § 134.103 would list proceedings over which OHA has jurisdiction and would amend current § 134.3. Paragraph (a) of the current rule would be deleted because contractor debarment and suspension proceedings can be more appropriately handled by the program office.

Current § 134.3(d) would be amended to delete all proceedings except those under the Rehabilitation Act of 1973 (29 U.S.C. § 794, as amended). Proceedings under the Age Discrimination Act (42 U.S.C. §§ 6101 *et seq.*) would be added. The remainder of the proceedings in current § 134.3(d) can be more appropriately conducted in other forums.

Current §§ 134.3(e) and (f) would be deleted. Thus, employee formal stage grievances and arbitrations arising under a pertinent labor agreement no longer would be under OHA's jurisdiction.

Proceedings to determine allowance of fees and expenses under the Equal Access to Justice Act (5 U.S.C. § 504), size and SIC code appeals, and proceedings pursuant to the Program Fraud Civil Remedies Act against persons who make false claims or statements would be added to the jurisdictional section.

Section 134.104 would restate in clear language the statutory limit on OHA's jurisdiction over certain types of MED appeals. Those limitations are currently set forth in § 124.210(d).

Proposed § 134.105 would restate in clear language the rules for computing time (current § 134.2(b)(2)) and modifying time limits (current § 134.4(a)). Paragraph (b) of current § 134.4 would be deleted.

Proposed § 134.201 would explain the scope of subpart B. Subpart B would cover all cases over which OHA has jurisdiction, except appeals from size determinations and SIC code designations, which would be covered in subpart C, and proceedings under the Program Fraud Civil Remedies Act, which would be covered in part 142.

Proposed § 134.202 would explain how to commence a case, and would provide revised time limits for filing petitions for various types of proceedings. The current regulation contains seven different rules pertaining to time limits for filing petitions, depending on the type of case. The proposed rule would provide that, with two exceptions, all petitions must be filed no later than 45 days from the date of service of the SBA action or determination to which the petition relates.

Proposed § 134.203 would specify the information required in a petition and provide that insufficient petitions may be dismissed. It would also incorporate the rules for filing petitions in certain MED appeals currently contained in § 124.210(b).

Proposed § 134.204 would amend the current rule on service and filing (§ 134.14). It would delete the requirement that multiple copies of pleadings be filed, and would add a provision permitting service and filing by facsimile transmission, United States express mail, or commercial delivery service. It is intended that ''commercial delivery service'' includes overnight or other expedited delivery by private business concerns. In cases where the filing is sent by first-class United States mail, it would change the date of filing with OHA from date of receipt to date of mailing, as determined by the postmark. It would also provide that in cases where the postmark is illegible or incomplete, the submission would be presumed to have been mailed five days prior to receipt. Finally, it would add a requirement that any filing by personal delivery or commercial delivery service must be made between the hours of 8:30 AM and 5:00 PM.

Current § 134.14(d), on waiver of rights to service, and current § 134.15, on format requirements, would be

deleted, as would the requirement that a certification be made as to the truth and accuracy of a filing. Under proposed § 134.209(b), a person's signature on a document would represent an express certification.

Proposed § 134.205 (currently § 134.11(c)) would be written in simpler language. The time limit for serving and filing a motion for a more definite statement would be increased from 15 to 20 days after service of a petition or order to show cause, so as to allow sufficient time in light of proposed § 134.204(e) pertaining to service. The rule would clarify that, where a motion for a more definite statement is filed, the Judge would establish the time for serving and filing an answer.

Proposed § 134.206, on answers, corresponds to § 134.12 of the current regulation. The current rule provides that answers for some types of cases must be filed within 30 days and others within 45 days after the filing of a petition. The proposed rule would provide that all answers must be filed no later than 45 days after the service of a petition, with the exception of debt collection proceedings for which a 30-day time limit would apply. The provision on notification to the Office of General Counsel of the docketing of a case would be deleted because it is an internal administrative procedure. Paragraph (d) of the current rule would be deleted. Proposed paragraphs (d) and (e) would clarify that SBA must submit the administrative record to OHA, and that the Judge can direct its compliance if necessary.

Proposed § 134.207, on amendments and supplemental pleadings, would not change the current rule substantially other than to simplify, shorten and reorganize it. It would limit the filing of amendments and supplements to pleadings in certain MED appeals to cases where a showing of good cause is made, with the Judge determining the time to answer. Current § 134.13(b), on conformance to evidence, would be deleted.

Proposed § 134.208, concerning representation in cases before OHA, would shorten the current section on appearances. Paragraphs (b) and (e) of current § 134.16 would be deleted as unnecessary practices. Paragraph (d) would also be eliminated since attorneys are presumed to know the ethical standards under which they must practice.

Proposed § 134.209 would adopt the signature requirements found elsewhere in the current rule, and would provide that the signing of a submission by a party or its counsel attests that the submission is true and is not being filed for delay or harassment. This provision would replace the requirement in current § 134.15 requiring a separate, express certification.

Proposed § 134.210, on intervention, would eliminate the distinction between intervention as of right and discretionary intervention, and would broaden and simplify the current rule by adding a provision permitting intervention at the Judge's discretion to protect the moving party's interests. The proposed rule would provide SBA a right to intervene at any time until final decision.

Proposed § 134.211 would state in summary form the requirements of motion practice. Paragraph (d) of the current rule relating to the disposition of motions when the assigned Judge is unavailable would be deleted. The response time in the proposed rule would be enlarged to 20 days after the service of a motion to allow sufficient time in light of proposed § 134.204(e) pertaining to service.

Proposed § 134.212 would summarize the current provision on summary decision (current § 134.22) with some minor revisions. Current paragraph (d) relating to the content of the Judge's order when a motion is granted would be deleted. A new paragraph (d) would be added to stay the response time for filing an answer when a motion for summary decision has been filed, and to provide that the Judge would determine the response time for answering any claims remaining after a decision on the motion is rendered.

Proposed § 134.213 would require the establishment of good cause as a prerequisite to discovery in non-MED matters. Current § 124.210(h)(3)(i), governing discovery in certain MED program appeals, would be incorporated in this proposed rule. Current § 134.18(c), *Protective orders,* and current § 134.26, *Motions to compel,* would be summarized and incorporated in the proposed rule on discovery.

Proposed § 134.214, on subpoenas, would modify the current rule with respect to both application requirements and service. While the current rule permits a party to apply for a subpoena both orally on the record and *ex parte* by written application, the proposed rule would limit all subpoena requests to written applications. Service in the proposed rule would be limited to personal delivery only, eliminating service by certified mail. The proposed rule would require the subpoena and the affidavit of service to be filed with OHA within two days of service. The time for response to a motion to quash would be enlarged in the proposed rule. Finally, the rule would clarify that a Judge can issue a subpoena on his or her own initiative.

Proposed § 134.215 would simplify the current procedure for interlocutory appeals by designating the AA/OHA or his or her designee as the reviewing official for purposes of all interlocutory appeals. The time for filing a motion to certify a ruling for an interlocutory appeal would be enlarged. The proposed rule also would make it clear that if the Judge declined to certify a ruling for interlocutory appeal, the affected party would be able to raise the adverse ruling in a subsequent request for review under § 134.228.

Proposed § 134.216 is new. This provision would permit the use of alternative dispute resolution techniques, such as arbitration and mediation, to resolve cases before OHA and would provide that, when such procedures are employed, the Judge would stay the proceedings before OHA as appropriate.

Proposed § 134.217 would shorten the current rule on settlements considerably. Cumulative information would be deleted and the requirements concerning the content of the agreement would be eliminated. The proposed rule would allow for partial settlements by eliminating paragraph (5) of the current rule. The remainder of the rule, while reorganized, would not be substantially revised.

Proposed § 134.218 would both shorten and modify current § 134.18 on Judges. It would require that an Administrative Law Judge be assigned to all proceedings under the Administrative Procedure Act. It would clarify that the AA/OHA could assign any other proceeding to himself or herself, provided that he or she is a duly licensed attorney. The duties and powers of the Judge would be stated broadly, clarifying that they can take such action as may be required to regulate proceedings and issue decisions. The proposed rule would eliminate paragraph (c) because protective orders are covered in proposed § 134.204(g), *Service and filing requirements,* and in § 134.213(d), *Discovery.* The proposed rule would also eliminate paragraph (e) on interference, which would be covered in proposed § 134.220, *Prohibition against ex parte communications.* The current paragraph on recusal would be rewritten in summary form. Paragraph (f), *Substitution of Judges,* would be eliminated because OHA's substitution procedures are consistent with court practice.

Proposed § 134.219 would modify the current rule on sanctions to clarify the type of conduct for which sanctions

might be imposed and to clarify that no sanctions imposing fees, costs, or monetary penalties can be ordered by the Judge. The rest of the rule would be more broadly stated, but its scope would not be substantively expanded.

Proposed § 134.220 would adopt the summary language of § 121.1715, now deleted, which also deals with the topic of *ex parte* communications. Rather than list the duties and obligations of a Judge as in current § 134.38, the proposed rule would incorporate by reference the Administrative Procedure Act, 5 U.S.C. § 557(d)(1). This statute contains explicit instructions for Judges who have been contacted *ex parte*. The proposed rule would reiterate current § 134.38 in emphasizing that prohibited communications may result in the imposition of sanctions.

Proposed § 134.221 would be shortened and rewritten in summary format instead of listing possible matters to be considered in a prehearing conference.

Proposed § 134.222, on oral hearings, would restate in clear language the intention of the current rule to leave oral hearings to judicial discretion. In the proposed rule, the Judge could permit an oral hearing in a non-MED matter only if he or she concluded that confrontation of witnesses was necessary to resolve a genuine dispute as to a material fact. The proposed rule would eliminate the provision in current § 134.19(a) restricting the time period within which a motion requesting an oral hearing may be submitted. However, current § 124.210(h)(3), which restricts the ability to request an oral hearing in certain MED program appeals, would be incorporated in § 134.222. Section 124.210(g) would also be modified and incorporated in this proposed rule. Selection of the location for all oral hearings would be committed to judicial discretion. Current §§ 124.211(e) and 124.211(h), relating to hearings on MED suspensions, would be incorporated in this part and expanded to provide that, for good cause, a Judge may waive the requirement that an oral hearing commence no more than 20 days after the ruling granting such hearing. Current paragraphs (c) and (d) of § 134.19, which track common federal court practices, would be eliminated, and current paragraphs (e)-(g) would be summarized for brevity's sake.

Proposed § 134.223, on evidence, would clarify OHA's use of the Federal Rules of Evidence as a general guide in its proceedings. Accordingly, paragraphs (b), (c), (d), (e), (f), and (g) of the current rule would be eliminated or shortened both for the sake of brevity, and because these paragraphs track the federal rules. Current § 124.210(h)(1) would be revised and incorporated in paragraph (c) and in proposed § 134.224, *Standards for decision*. Current § 124.210(h)(3)(i) would be reorganized for clarity and moved to this section, insofar as it relates to the submission of evidence, and to § 134.211(b), insofar as it relates to discovery. Section 124.210(h)(2) would also be incorporated in paragraph (d) of the proposed rule, clarifying that the Judge would retain jurisdiction during any remand.

Proposed § 134.224, on standards for decision, would set forth the burden of proof in factual matters arising in cases before OHA. This language is currently set forth in § 134.31, *Contents of decisions*. It would also incorporate current § 124.210(h)(1), which provides the standard of review in cases involving MED program appeals. The scope of review would not change from the current rule.

Proposed § 134.225, dealing with the record, would be shortened considerably. The proposed rule would refer to the ''record'', instead of the ''docket file'', which would comport with the terminology used in the Administrative Procedure Act. Information relating to the internal administration of OHA would be deleted. The proposed rule would incorporate portions of current § 134.31, which would be deleted in its entirety. The remaining sections of the current rule on records would be eliminated or summarized for the sake of brevity.

Proposed § 134.226 would require that all decisions pertaining to the collection of debt owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter, must be rendered within 60 days after a petition is filed. Further it would incorporate, without modification, § 124.210(j), relating to decisions in certain MED proceedings, and would amend current § 124.211(i) to eliminate the requirement that a decision be rendered at the close of a suspension hearing, where one is held. It would also adopt the remaining portions of § 134.31, *Contents of decisions*.

Proposed § 134.227, on finality of decisions, would be rewritten to reflect the jurisdictional changes in § 134.103. Since OHA would no longer have jurisdiction over employee formal stage grievances or arbitrations involving labor agreements, current paragraphs 134.31(a)(1) and (a)(2) would be deleted. Paragraph (b) would be rewritten consistent with the jurisdictional changes in proposed § 134.103. Because OHA would no longer have jurisdiction in contractor debarment and suspension proceedings, former paragraph (c) would also be eliminated. The remaining portions of paragraphs (a) and (b) would be rewritten for clarity.

Proposed § 134.228, on review of initial decisions, is based upon current § 134.34, but would permit the filing of a request for review directly with OHA. The term ''agency reviewing official'' would be eliminated. Upon a request for review, SBA's Administrator or his or her designee would review the initial decision and could set aside a decision if it were found to be based upon an erroneous finding of fact or an erroneous interpretation of case law, statute, regulation, or SBA policy. Time frames for filing a response to a petition for review would be enlarged.

Proposed § 134.229 would be rewritten for clarity.

Proposed § 134.301 would define the scope of subpart C. Subpart C would cover the rules on appeals from size determinations and SIC code designations currently found in §§ 121.1701 *et seq*. It would shorten and simplify current § 121.1701, deleting any reference to Regional Offices since authority to make size determinations has been transferred from Regional Offices to Government Contracting Area Offices.

Proposed § 134.302 corresponds to current § 121.1703 and would specify who may appeal a size determination or SIC code designation. This section would delete the reference to the Regional Administrator (since Regional Offices are no longer involved in size determinations), and clarify that the procuring agency contracting officer responsible for the relevant procurement has an appeal right.

Proposed § 134.303 would incorporate a policy decision to make the review of size appeals by OHA a matter of its discretion. This change would conserve limited resources and avoid the necessity of deciding cases where the regulation or case precedent is clear.

Proposed § 134.304 would specify the time limits for appeal, simplifying the current rule considerably. Time limits for appealing size determinations would now run from the date of service of the determination rather than from the date of receipt. The time periods for filing would be lengthened for certain types of appeals and shortened for others. Time limits for appeals from SIC code designations would run from the date the solicitation is issued. The current time limits for appeals of SIC code designations run backwards from the bid opening date or deadline for submitting proposals or quotations and are complex and difficult to use. The

rule on counting Saturdays, Sundays and holidays would be amended to conform to the rule for other OHA proceedings and would be incorporated in § 134.105. The remainder of the current section would be reorganized, but not substantively changed.

Proposed § 134.305 concerning the appeal petition would simplify current § 121.1706. A telefaxed notice would no longer need to be confirmed by next day mailing of a written notice. A signed certification as to the truth and accuracy of the appeal petition would no longer be required. In size appeals, the appellant would no longer be required to serve a copy of the appeal petition on all alleged affiliates of the concern whose size is at issue. The requirement would provide separate requirements for service of an SIC code appeal petition as opposed to a size appeal petition. A provision would be added clarifying that appeals may be dismissed if they do not contain all the required information.

Proposed § 134.306 would restate current § 121.1706(b) concerning transmission of the case file from the office that made the size determination to OHA.

Proposed § 134.307 would incorporate by reference proposed § 134.204. The rule for service and filing of submissions for size and SIC code appeals would be the same as that for filing petitions under subpart B, with the rule in subpart B incorporated by reference. The requirement in the current rule (§ 121.1712) that service be made by certified or registered mail would be deleted to ease the burden on the public. The current requirement that an express certification be made as to the truth and accuracy of any submission to OHA would be deleted. Under proposed § 134.209 (incorporated by reference), any person signing a document attests to its truth and accuracy. Proposed § 134.307 would incorporate by reference a rule on determining the date of service or filing. Proposed § 134.105 would incorporate the rule on modification of time limits in current § 121.1712(e).

Proposed § 134.308 is new and would provide that evidence not presented to the SBA official whose size determination is being appealed would only be considered when ordered by the Judge. A new provision would also be added to provide that the Judge could draw adverse inferences against parties who do not submit evidence in their possession when directed to do so.

Proposed § 134.309, concerning responses to the appeal petition, corresponds to current § 121.1708. It would be reorganized for clarity, would enlarge the time to file a response to an appeal from 5 to 10 days, and would clarify that replies to responses would not be permitted unless directed by the Judge.

Proposed § 134.310 on discovery would incorporate the current policy of OHA not to permit discovery in either size or SIC code proceedings.

Proposed § 134.311 would provide that oral hearings not be held in SIC code appeals, and be held in size appeals only under exceptional circumstances. In SIC code cases, short time frames make the use of oral hearings impracticable. Moreover, there is rarely a need to confront witnesses in an SIC code appeal. Under exceptional circumstances, oral hearings may be appropriate in size determination appeals. In such instances, the proceedings would be conducted in accordance with those rules in subpart B deemed appropriate by the Judge.

Proposed § 134.312 would incorporate by reference certain paragraphs in § 134.223 for cases where evidence is admitted. There is no separate rule on evidence in the current regulations relating to appeals from size determinations and SIC code designations.

Proposed § 134.313 would incorporate by reference certain other provisions in subpart B. The rules for amendments to pleadings, representation, signature, intervention, motions, subpoenas, Judges, sanctions, and the prohibition against *ex parte* communications, would be identical to those for other proceedings before OHA. For the sake of brevity and simplicity, these sections would be incorporated by reference in subpart C rather than repeated verbatim.

The proposed rule on amendments to pleadings does not appear in the current rule and would permit parties to amend pleadings if permitted by the Judge. The proposed rule on representations does not appear in the current rules and would limit the types of persons who could represent parties in proceedings before OHA. The current rule on intervention (§ 121.1709) would be broadened to permit OHA to allow an interested person to intervene if the Judge determines that the person's participation in the proceedings would likely assist in the efficient, prompt, and fair determination of the case. The proposed rule on signatures would include a provision that by signing a submission a person attests to its truth and accuracy. This would replace the requirement in current § 121.1712(d) that an express certification be made as to the truth and accuracy of a document. The proposed section on motions is new and would clarify what is required when filing a motion in these proceedings. The section on Judges would be shortened considerably. The current rule on Judges (§ 121.1713) lists all the various powers of a Judge in OHA. The proposed rule would state the duties and powers of the Judge in broad terms. The current section on *ex parte* communications (§ 121.1715) would not be substantially changed except that the Administrative Procedure Act would be cited with regard to a Judge's duty to disclose *ex parte* communications. The provision on sanctions (current § 121.1713(p)) would be shortened, and the list of the types of sanctions that could be imposed would be deleted.

Proposed § 134.314 would provide that the standard of review in size and SIC code appeals would be whether the determination was based on clear error of law or fact. In cases where new evidence was submitted, it is recognized that clear error of law or fact could be found as a result of such new evidence.

Proposed § 134.315, concerning the record, would incorporate by reference certain paragraphs in § 134.225, and would add a sentence providing that the contents of the record would also include the file submitted to OHA by the Area Office and any materials submitted by the contracting officer.

Proposed § 134.316, on the decision, corresponds to current § 121.1720. The current rule would be shortened considerably. References to hearings and post-hearing procedures would be eliminated. The statement concerning oral notification of the ultimate determination would be eliminated. Judges may provide oral notice of the decision as a matter of practice under their powers as Judges.

Proposed § 134.317 is new and would clarify that OHA's jurisdiction would terminate upon the issuance of the decision.

Proposed § 134.318 would inform the public that the case file would be returned to the transmitting Area Office upon termination of OHA's jurisdiction.

A number of sections in the current rules would be deleted or incorporated elsewhere. The definitions in current § 121.1702 would be incorporated in proposed § 134.102, the definitional section for all of part 134. Current § 121.1704 would be incorporated in proposed § 134.204 on service and filing requirements. Current § 121.1710 would be substantially incorporated in proposed § 134.225. Current § 121.1711 would be deleted since the assignment of a Judge is an internal administrative procedure. The right to request reconsideration in current § 121.1712 would be eliminated in order to streamline the appellate process.

Current § 121.1716, on subpoenas, would be deleted since proposed § 134.313 would incorporate by reference proposed § 134.214. Current § 121.1717, concerning *in camera* orders, would be deleted since proposed § 134.307 would incorporate by reference proposed § 134.204(g), and proposed § 134.315 would incorporate by reference proposed § 134.225(b). Current § 121.1719, concerning post-hearing procedures, would be eliminated since oral hearings would no longer be held in SIC code appeals, and only rarely in size appeals. Current § 121.1722, concerning the delegation of authority when a Judge is not available, would be deleted since it is an internal procedure and is a matter of general practice in administrative and judicial forums.

Proposed § 134.401 corresponds to existing § 132.101. There are no substantive changes in the proposed section. This section, and the sections which follow, are organized in question and answer format to make the information more accessible.

Current § 132.102 which discusses the sunset of the Equal Access to Justice Act (the ''Act'') would be deleted because Public Law 99–80 enacted August 5, 1984 reauthorized the Act.

Proposed § 134.402 describes generally the types of proceedings under which you may apply for reimbursement. This proposed section corresponds to current §§ 132.101, 132.103, and 132.105.

Proposed § 134.403 corresponds to existing § 132.103. The proposed section defines which types of proceedings conducted by OHA are ''agency adversary adjudications'' covered by the Act. The proposed section would revise the current section to be consistent with § 134.103 in subpart A of this rule, which lists the types of proceedings in which OHA has jurisdiction. Note that only a few categories of OHA proceedings qualify as ''agency adversary adjudications'': proceedings concerning the revocation or suspension of SBIC licensees, cease and desist orders, and the removal or suspension of SBIC directors and officers; proceedings under the Debt Collection Act of 1982; and MED eligibility appeals relating to admission, termination, graduation, and waiver denials under § 124.317.

Proposed § 134.404 is new. It describes generally the type of benefits you may claim.

Proposed § 134.405 corresponds to existing § 132.105. The material is revised in the proposed rule to provide clarification of certain terms used in the current section, such as ''position of the agency''. The proposed section would incorporate the clarified definition added to the Act in the 1984 amendment at 5 U.S.C. § 504(b)(1)(E) and in the amended Model Rule at 1 C.F.R. § 315.105(a). The definition now includes the position taken by the agency in the administrative proceeding, as well as the agency's position in the underlying action which triggered the administrative proceeding. The proposed section would also provide that although no presumption arises that SBA's position was not substantially justified simply because it did not prevail in a proceeding, nonetheless, upon the assertion that the position of SBA was not substantially justified, SBA would be required to establish that its position was reasonable in fact and law.

Proposed § 134.406(a) clarifies the definition of eligible party found in current § 132.104. The current section does not define ''party'' but instead refers to the definition in 5 U.S.C. § 551(3). This reference is confusing because the definition of ''party'' in that statute could include federal agencies. Federal agencies are not parties eligible for reimbursement under the Act. The proposed new section actually defines an eligible party in a manner consistent with the Act. Proposed § 134.406(b) corresponds to existing § 132.104(h).

Proposed § 134.407 corresponds to existing §§ 132.104(b), (c), (d) and (e), which describe eligibility criteria. The proposed section summarizes the material on eligibility in the form of a chart and revises it to reflect the amendment to the Act which increased the net worth eligibility ceiling.

Proposed § 134.408 corresponds to existing subsections 132.104(f) and (g). The reorganized material summarizes all the special rules for calculating eligibility in one section.

Proposed § 134.409 describes the difference between fee and expense.

Proposed § 134.410 describes the limitations on reimbursement of professional fees and expenses found in current §§ 132.201 and 132.202. That portion of the proposed section pertaining to fees presents the information in more succinct form, but does not substantively revise it. That portion of the proposed section relating to expenses revises the current rule so that it will be consistent with the proposed rule relating to fees. The current section would not otherwise be substantively revised.

Proposed § 134.411 corresponds to existing § 132.301. The proposed section reorganizes material relating to applications and conforms the service and filing requirements to the requirements of § 134.204. The lengthy requirements of the current section would be revised and summarized for ease of reference. A chart would be added to clarify what each type of party must attach as exhibits to the petition.

Proposed § 134.412 corresponds to existing § 132.302. The proposed section reorganizes material relating to net worth exhibits and presents it in simplified form. The text is significantly condensed. Redundant information is deleted.

Proposed § 134.413 corresponds to existing § 132.303. The proposed section sets forth the requirements of the current rule in a clearer format for ease of reference. Additional specificity is provided in the proposed section respecting the submission of statements or invoices for expenses. This language was added so that the requirements for expense invoices would be consistent with the requirements for fee statements.

Proposed § 134.414 corresponds to existing §§ 132.301 and 132.402. The proposed section reorganizes material relating to the filing deadline of applications. The proposed section also effectuates the stay language in the Act, at 5 U.S.C. § 504(a)(2), which provides for a stay of award requests if the SBA or another party appeals the underlying decision. The Act requires award requests to be stayed until a final unreviewable decision is rendered in the underlying adjudication. This information is not contained in the current SBA regulations although it is both in the Act and in the Model Rule for Implementation of the Equal Access to Justice Act at 1 CFR § 315.204.

Proposed § 134.415 incorporates the procedural requirements of subpart B by reference.

Proposed § 134.416 corresponds to existing §§ 132.402(a) and 132.403. The proposed section reorganizes the material relating to the ALJ's decision. The current text would be condensed and summarized in the proposed rule, but not otherwise revised.

Proposed § 134.417 corresponds to existing § 132.404. The proposed section clarifies the avenues available to an applicant to seek review of an ALJ's decision on an award, and the time frames which must be observed. The proposed section adds new language to current § 134.404 as to what type of SBA decision is a ''determination'' under the Act for purposes of judicial review.

Proposed § 134.418 corresponds to existing § 132.501. The proposed section would add the SBA's address for Financial Operations to expedite payment of awards but would not otherwise revise the section.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. §§ 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. §§ 601 *et seq.* This rule would reorganize and simplify the rules governing procedures before SBA's Office of Hearings and Appeals. Contracting opportunities and financial assistance for small business would not be affected by this proposed rule. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

List of Subjects

13 CFR Part 132,

Claims, Equal Access to Justice, Lawyers.

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

For the above reasons, and under the authority of 15 U.S.C. 634(b)(6), SBA proposes to amend 13 CFR Chapter I as follows:

1. Part 134 would be revised to read as follows:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

Subpart A—General Rules

Sec.

Subpart B—Rules of Practice for Most Cases

Subpart C—Rules of Practice for Appeals From Size Determinations and SIC Code Designations

Subpart D—Implementation of the Equal Access to Justice Act

Authority: 5 U.S.C. 504; 15 U.S.C. 634(b)(6) and 637(a).

Subpart A—General Rules

§ 134.101 Scope of the rules in this part 134.

The rules in this part 134 govern the conduct of all proceedings before OHA except those governed by part 142 of this chapter.

§ 134.102 Definitions used in this part 134.

As used in this part:

AA/OHA means the Assistant Administrator for OHA.

Address means the primary home or business address of a person or entity, including the street location or postal box number, city or town, state, and postal zip code.

Area Office means a Government Contracting Area Office or a Disaster Area Office of the Small Business Administration.

Day means a calendar day, unless a Judge specifies otherwise.

Hearing means the presentation and consideration of argument and evidence. A hearing may or may not include live testimony or argument.

Judge means an Administrative Law Judge or an Administrative Judge of OHA, or the AA/OHA when he or she acts in the capacity of an Administrative Judge.

OHA means the Office of Hearings and Appeals.

Party means the petitioner, respondent, or intervenor.

Person means an individual, or a partnership, association, corporation, or other business entity.

Petition means a written complaint, a written notice of appeal from an SBA

determination, or a written request for the initiation of proceedings before OHA.

Petitioner means any person or governmental agency which has brought a proceeding before OHA.

Pleading means a petition, an order to show cause commencing a case, a notice of appeal, or an answer, as well as any amendment or supplement to those documents.

Respondent means any person or governmental agency against which a case has been brought before OHA.

SBA means the United States Small Business Administration.

SIC code means Standard Industrial Classification code.

Size determination means a formal size determination made by an Area Office.

§ 134.103 Jurisdiction of OHA.

OHA has authority to conduct proceedings in the following types of cases:

(a) The revocation or suspension of Small Business Investment Company licenses, cease and desist orders, and the removal or suspension of directors and officers of licensees, under the Small Business Investment Act of 1958, 15 U.S.C. 681 *et seq.* and part 107 of this chapter;

(b) Alleged violations of the Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.* and part 112, subparts A and B, of this chapter, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and part 112, subpart C, of this chapter;

(c) The revocation of the privilege of any applicant or agent to conduct business with SBA under the Small Business Act, 15 U.S.C. 634 and 642 and part 103 of this chapter;

(d) The eligibility of, or preferred or certified status of, any bank or non-bank lender to continue to participate in SBA loan programs under the Small Business Act, 15 U.S.C. 634 *et seq.* and part 120 of this chapter;

(e) The suspension or termination of surety bond program participants under 15 U.S.C. 694a *et seq.* and part 115 of this chapter;

(f) The rights, privileges, or obligations of development companies under sections 501, 502, 503, and 504 of the Small Business Investment Act of 1958, 15 U.S.C. 695 *et seq.* and part 120, subpart H, of this chapter;

(g) Allowance of fees and expenses under the Equal Access to Justice Act, 5 U.S.C. 504 and subpart D of this part;

(h) Debarment from appearance before the SBA because of post-employment restrictions under 18 U.S.C. 207 and part 105 of this chapter;

(i) Collection of debts owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter;

(j) Appeals from the following SBA determinations involving the MED program under the Small Business Act, 15 U.S.C. 637 and part 124 of this chapter:

(1) Denial of program admission based solely on a negative finding as to social disadvantage, economic disadvantage, ownership or control; program termination; program graduation; or denial of a waiver of the requirement to perform to completion a MED contract; and

(2) Program suspension;

(k) Appeals from size determinations and SIC code designations under part 121 of this chapter;

(l) The imposition of civil penalties and assessments against persons who make false claims or statements to SBA under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812 and part 142 of this chapter; and

(m) Any other hearing, determination, or appeal proceeding referred to OHA by the Administrator of SBA.

§ 134.104 Limitation on the jurisdiction of OHA.

A Judge considering a MED program appeal arising under § 134.103(j)(1) of this part must not accept jurisdiction if:

(a) The appeal does not allege facts that, if true, would warrant reversal or modification of the determination; or

(b) The appeal is not filed on time and in accordance with the requirements of this part; or

(c) The matter has been decided or is the subject of a pending case before a court.

§ 134.105 Rules applicable to time periods provided in this part 134.

(a) *Computing time.* In computing time, the day from which the time is computed is not counted. The last day of the time period is counted, unless it is a Saturday, Sunday, or Federal holiday, in which event the next business day is counted.

(b) *Modification of time limits.* At the Judge's discretion, or upon the motion of a party showing good cause, the Judge may modify any of the time limits set forth in this part, other than those established by statute and those governing when a case may be commenced. However, any motion to extend a time limit must be filed and served before the expiration of that time limit.

Subpart B—Rules of Practice for Most Cases

§ 134.201 Scope of the rules in subpart B.

The rules of practice in subpart B of this part apply to all proceedings over which OHA has jurisdiction, except for appeals from size determinations and SIC code designations and proceedings governed by part 142 of this chapter.

§ 134.202 Commencement of cases.

(a) *Commencement of a case by a person.* A case may be commenced by a person by filing a written petition within the following time periods:

(1) Except as otherwise provided by this paragraph, no later than 45 days from the date of service of the SBA action or determination to which the petition relates;

(2) In the case of debt collection proceedings under part 140 of this chapter, no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset;

(3) In the case of applications for an award of fees pursuant to subpart D of this part, no later than 30 days after the decision to which it applies becomes final.

(b) *Commencement of a case by SBA.* A case may be commenced by SBA by filing a written order to show cause.

§ 134.203 The petition.

(a) *Required contents of a petition.* A petition must contain the following information:

(1) The basis of OHA's jurisdiction over the case;

(2) A clear and concise statement of the factual basis of the case and, if the case is a MED program appeal arising under § 134.103(j)(1) of this part, the reasons why the determination is alleged to be arbitrary, capricious, or contrary to law;

(3) The relief being sought; and

(4) The name, address, telephone number, and signature of the petitioner or its attorney.

(b) *Dismissal of insufficient petitions.* A petition which does not contain all of the information required by paragraph (a) of this section may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of the respondent.

§ 134.204 Service and filing requirements.

(a) *Service.* Each party is responsible for the service of its pleadings and other submissions upon all other parties or their attorneys. Unless otherwise ordered by the Judge, service is made by providing each party, or its attorney, with a copy of the pleading or other submission by personal delivery, first-

class United States mail, United States express mail, facsimile transmission, or commercial delivery service. If service is to be by first-class United States mail or United States express mail, it must be accomplished as follows:

(1) By mailing to a party's last-known residence or business address if it has not yet appeared in the case, or by mailing to the address of a party which has appeared as shown in its submission;

(2) If a party has appeared in the case through an attorney, by mailing to the address of the attorney shown in the party's submission or in a notice of appearance;

(3) If to SBA, unless an attorney is specified in SBA's submissions to OHA, by mailing to: Office of General Counsel, Small Business Administration, 409 Third Street, S.W.—Seventh Floor, Washington, D.C. 20416.

(b) *Filing.* (1) All pleadings and other submissions must be filed with OHA by personal delivery, first-class United States mail, United States express mail, facsimile transmission, or commercial delivery service. Filing may only be accomplished at the following address: Office of Hearings and Appeals, Small Business Administration, 409 Third Street, S.W.—Mail Code 2441, Washington, D.C. 20416.

(2) If filing is to be by personal delivery or commercial delivery service, such filing must be accomplished between the hours of 8:30 a.m. and 5:00 p.m. If filing is to be by facsimile transmission, the telephone number to be used may be obtained by calling OHA in Washington, D.C.

(c) *Number of copies which must be filed.* Only the original of a pleading or other submission must be filed with OHA. In the case of a document offered as evidence, an authenticated copy may be filed instead of the original.

(d) *Certificate of service.* A signed certificate stating how and when service was made on all parties must be attached to each pleading or other submission filed with OHA.

(e) *Date of service and filing.* Unless otherwise specified by the Judge, the date of service or filing is as follows:

(1) In the case of service or filing by facsimile transmission, the date of transmission;

(2) In the case of service or filing by first-class United States mail, the date of postmark; and

(3) In the case of service or filing by personal delivery, United States express mail, or commercial delivery service, the date of receipt.

(f) *Presumption relating to the date of service or filing by first-class United States mail.* Where the determination of the date of service or filing is dependent upon the date of postmark, and the postmark is illegible or incomplete, there will be a rebuttable presumption that the postmark was dated five days prior to the date of receipt.

(g) *Treatment of confidential information.* Any information in pleadings or other submissions that is believed by the submitting party to constitute proprietary or confidential information need not be served upon other parties so long as the deletions are clearly identified and generally described in the documents which are served. Upon motion, the Judge may direct that the withheld information be provided to other parties, subject to any appropriate protective order.

§ 134.205 Motion for a more definite statement.

(a) *Procedure.* No later than 20 days after service of the petition or order to show cause, the respondent may serve and file a motion requesting a more definite statement by the petitioner of particular allegations in the petition or order to show cause identified by the respondent. Where the respondent makes a reasonable showing that a response cannot be made in the absence of further detail by the petitioner, the Judge will issue an order directing the petitioner to serve and file a more definite statement.

(b) *Stay.* The serving and filing of a motion for a more definite statement stays the time for serving and filing an answer. In the order determining the motion for a more definite statement, the Judge will establish the time for serving and filing an answer.

§ 134.206 The answer.

(a) *Time due.* A respondent must serve and file an answer within 45 days after the service of a petition or order to show cause, except that debt collection proceeding answers are due within 30 days.

(b) *Required contents of an answer.* The answer must contain the following:

(1) An admission or denial of each of the factual allegations contained in the petition or order to show cause, or a statement that the respondent denies knowledge or information sufficient to determine the truth of a particular allegation;

(2) Any affirmative defenses; and

(3) The name, address, telephone number, and signature of the respondent or its attorney.

(c) *Failure to deny.* Allegations in the petition or order to show cause which are not answered in accordance with paragraph (b)(1) of this section will be deemed admitted unless injustice would occur.

(d) *Submission of the written administrative record.* Upon an appeal from an SBA determination concerning the MED program, SBA must serve and file the written administrative record pertaining to that determination within the same time period applicable to the service and filing of its answer. If SBA fails to serve and file the written administrative record within the appropriate time period, the Judge will issue an order directing SBA to serve and file the administrative record by a specified date.

(e) *Default.* If the respondent fails to serve and file an answer within the time period set forth in paragraph (a) of this section, or within any extended time period granted by the Judge, that failure will constitute a default. Following such a default, the respondent will be prohibited from participating further in the case, except to serve and file the written administrative record in accordance with paragraph (d) of this section. The Judge will then proceed to issue a decision.

§ 134.207 Amendments and supplemental pleadings.

(a) *Amendment of pleadings.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the service and filing of amendments to pleadings. However, an amendment will not be permitted if it would cause unreasonable delay in the determination of the matter.

(b) *Supplemental pleadings.* Upon motion, and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the service and filing of a supplemental pleading setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading.

(c) *Limitation applicable to MED program appeals arising under § 134.103(j)(1) of this part.* In MED program appeals arising under § 134.103(j)(1) of this part, amendments to pleadings and supplemental pleadings will be permitted by the Judge only upon a showing of good cause.

(d) *Answer to a petition or order to show cause which has been amended or supplemented.* In an order permitting the serving and filing of an amended or supplemented petition or order to show cause, the Judge will establish the time for serving and filing an answer.

§ 134.208 Representation in cases before OHA.

(a) *Representation pro se or by an attorney.* A party to a case before OHA may represent itself, or be represented by a duly licensed attorney. A member

of a partnership may represent the partnership, and an officer may represent a corporation, trust, or association.

(b) *Notice of appearance.* An attorney for a party who did not appear on behalf of that party in the party's first filing with OHA, must serve and file a written notice of appearance.

(c) *Withdrawal of appearance.* An attorney seeking to withdraw from a case must serve and file a motion for the withdrawal of his or her appearance.

§ 134.209 Requirement of signature.

(a) *Requirement of signature.* Every written submission to OHA, other than evidence, must be signed by the party filing that submission, or by the party's attorney.

(b) *Meaning of signature.* By signing a submission to OHA, a party or its attorney attests that the statements and allegations in that submission are true to the best of its knowledge, and that the submission is not being filed for the purpose of delay or harassment.

§ 134.210 Intervention.

(a) *Intervention by SBA.* SBA may intervene as of right at any time in any case until final decision.

(b) *Intervention by interested persons.* Any individual, partnership, association, corporation, trust, or governmental agency may move to intervene at any time until final decision by serving and filing a motion to intervene containing a statement of the movant's interest in the case and the necessity for intervention, to protect such interest. The Judge may grant leave to intervene upon such terms as he or she deems appropriate.

§ 134.211 Motions.

(a) *Contents.* All motions must state the relief being requested, as well as the grounds and any authority for that relief.

(b) *Response.* No later than 20 days after the service of a motion, all non-moving parties must serve and file a response or be deemed to have consented to the relief sought. Unless the Judge directs otherwise, the moving party will have no right to reply to a response, nor will oral argument be heard on the motion.

(c) *Service of written orders.* OHA will serve upon all parties any written order issued in response to a motion.

§ 134.212 Summary decision.

(a) *Grounds.* A party may move for summary decision at any time as to all, or any portion of, the case, on the grounds that there is no genuine issue as to any material fact, and that the moving party is entitled to a decision in its favor as a matter of law.

(b) *Contents of motion.* The motion must include a statement of the material facts believed not to be disputed, and relevant law. Supporting affidavits may also be included.

(c) *Cross-motions.* In its response to a motion for summary decision, a party may cross-move for summary decision in its own favor. The initial moving party may serve and file a response to any cross-motion for summary decision within 20 days after the service of that cross-motion.

(d) *Stay.* A motion for summary decision stays the time to answer. If appropriate, the Judge will establish the time for serving and filing an answer in the order determining the motion for summary decision.

§ 134.213 Discovery.

(a) *Discovery in cases other than those involving MED program appeals arising under § 134.103(j)(1) of this part.* In cases other than those involving MED program appeals arising under § 134.103(j)(1) of this part, a party may obtain discovery only upon motion, and for good cause shown.

(b) *Discovery in MED program appeals arising under § 134.103(j)(1) of this part.* In MED program appeals arising under § 134.103(j)(1) of this part, discovery will be permitted only upon motion, and only if it is determined by the Judge that the requesting party has made a substantial showing, based upon credible evidence, and not mere allegation, that the SBA determination in question may have resulted from bad faith or improper behavior. Any permitted discovery will be limited to facts relating to the alleged bad faith or improper behavior asserted by the party seeking discovery.

(c) *Forms of permissible discovery.* The forms of discovery which a Judge can order under paragraphs (a) and (b) of this section include requests for admissions, requests for production of documents, interrogatories, and depositions.

(d) *Limitations upon discovery.* Discovery may be limited in accordance with the terms of a protective order. Further, privileged information and irrelevant issues or facts will not be subject to discovery.

(e) *Motions available to resolve a discovery dispute.* If a dispute should arise between the parties over a particular discovery request, the party seeking discovery may serve and file a motion to compel discovery. Discovery may be opposed on the grounds of harassment, needless embarrassment, irrelevance, undue burden or expense, privilege, or confidentiality.

§ 134.214 Subpoenas.

(a) *Availability of subpoenas.* At the request of a party, or upon his or her own initiative, a Judge may issue a subpoena requiring a witness to appear and testify, or to produce particular documents, at a specified time and place.

(b) *Requests for the issuance of a subpoena.* A request for the issuance of a subpoena must be written, served upon all parties, and filed. The request must clearly identify the witness and any documents to be subpoenaed, and must set forth the relevance of the testimony or documents sought.

(c) *Service.* A subpoena may only be served by personal delivery. The individual making service shall prepare an affidavit stating the date, time, and place of the service. The party which obtained the subpoena must serve upon all other parties, and file with OHA, a copy of the subpoena and affidavit of service within 2 days after service is made.

(d) *Motion to quash.* A motion to limit or quash a subpoena must be served and filed within 10 days after service of the subpoena, or by the return date of the subpoena, whichever date comes first. Any response to the motion must be served and filed within 10 days after service of the motion, unless a shorter time is specified by the Judge. No oral argument will be heard on the motion unless the Judge directs otherwise.

§ 134.215 Interlocutory appeals.

(a) *General rules.* A motion for leave to take an interlocutory appeal from a Judge's ruling will not be entertained in those proceedings in which OHA issues final decisions. In all other cases, an interlocutory appeal will be permitted only if, upon motion by a party, or upon the Judge's own initiative, the Judge certifies that his or her ruling raises a question which is immediately appealable. Interlocutory appeals will be decided by the AA/OHA or a designee.

(b) *Motion for certification.* A party must serve and file a motion for certification no later than 20 days after issuance of the ruling to which the motion applies. A denial of the motion does not preclude objections to the ruling in any subsequent request for review of an initial decision.

(c) *Basis for certification.* The Judge will certify a ruling for interlocutory appeal only if he or she determines that:

(1) The ruling involves an important question of law or policy about which

there is substantial ground for a difference of opinion; and

(2) An interlocutory appeal will materially expedite completion of the case, or denial of an interlocutory appeal would cause undue hardship to a party.

(d) *Stay of proceedings.* A stay of the proceedings, while an interlocutory appeal is pending, will be at the discretion of the Judge.

§ 134.216 Alternative dispute resolution procedures.

At any time during the pendency of a case, the parties may submit a joint motion requesting that the Judge permit the use of alternative dispute resolution procedures to assist in resolving the matter. If the motion is granted, the Judge will also stay the proceedings before OHA, in whole or in part, as he or she deems appropriate, pending the outcome of the alternative dispute resolution procedures.

§ 134.217 Settlement.

(a) *Contents of a Settlement Agreement.* At any time during the pendency of a case, the parties may submit a settlement agreement, signed by all settling parties, to the Judge.

(b) *Admissibility.* Settlement negotiations, and rejected settlement agreements, are not admissible into evidence.

§ 134.218 Judges.

(a) *Assignment of Judges.* The AA/OHA will assign all cases subject to the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*, to an Administrative Law Judge. The AA/OHA will assign all other cases before OHA to either an Administrative Law Judge or an Administrative Judge, or, if the AA/OHA is a duly licensed attorney, to himself or herself.

(b) *Authority of a Judge.* Except as otherwise limited by this part, or by statute or other regulation, a Judge has the authority to take all appropriate action to ensure the efficient, prompt, and fair determination of a case, including, but not limited to, the authority to administer oaths and affirmations and to subpoena and examine witnesses.

(c) *Recusal.* Upon the motion of a party, or upon the Judge's own initiative, a Judge will promptly recuse himself or herself from further participation in a case whenever disqualification is appropriate due to conflict of interest, bias, or some other significant reason. A denial of a motion for recusal may be immediately appealed to the AA/OHA, or to the Administrative Law Judge if the AA/OHA is the Judge, but that appeal will not stay proceedings in the case.

§ 134.219 Sanctions.

A Judge may impose appropriate sanctions, except for fees, costs, or monetary penalties, which he or she deems necessary to serve the ends of justice, if a party or its attorney:

(a) Fails to comply with an order of the Judge;

(b) Fails to comply with the rules set forth in this part;

(c) Acts in bad faith or for purposes of delay or harassment;

(d) Submits false statements knowingly, recklessly, or with deliberate disregard for the truth; or

(e) Otherwise acts in an unethical or disruptive manner.

§ 134.220 Prohibition against ex parte communications.

No person shall consult or communicate with a Judge concerning any fact, question of law, or SBA policy relevant to a case before that Judge except on prior notice to all parties, and with the opportunity for all parties to participate. In the event of such prohibited consultation or communication, the Judge will disclose the occurrence in accordance with the Administrative Procedure Act, 5 U.S.C. 557(d)(1), and may impose such sanctions as he or she deems appropriate.

§ 134.221 Prehearing conferences.

Prior to a hearing, the Judge, at his or her own initiative, or upon the motion of any party, may direct the parties or their attorneys to appear, by telephone or in person, in order to consider any matter which may assist in the efficient, prompt, and fair determination of the case. The conference may be recorded verbatim at the discretion of the Judge, and, if so, a party may purchase a transcript, at its own expense, from the recording service.

§ 134.222 Oral hearing.

(a) *Availability of an oral hearing.* At his or her own initiative, or upon the motion of any party, the Judge may order an oral hearing if he or she concludes that there is a genuine dispute as to a material fact that cannot be resolved except by the taking of testimony and the confrontation of witnesses. However, in MED program appeals arising under § 134.103(j)(1) of this part, an oral hearing will not be permitted unless the Judge determines that there has been a substantial showing, based upon credible evidence, that the SBA determination in question may have resulted from bad faith or improper behavior.

(b) *Place and time of oral hearings.* The place and time of oral hearings is within the discretion of the Judge, who shall give due regard to the necessity and convenience of the parties, their attorneys, and witnesses. The Judge may direct that an oral hearing be conducted by telephone. In cases arising from a MED program suspension determination, any oral hearing granted by the Judge must commence as soon as possible, but not more than 20 days after the ruling granting the oral hearing except upon a showing of good cause.

(c) *Public access to oral hearings.* Unless otherwise ordered by the Judge, all oral hearings are public.

(d) *Payment of witnesses subpoenaed to attend oral hearings.* A party which obtains a witness's presence at an oral hearing by subpoena, must pay to that witness the fees and mileage costs to which the witness would be entitled in the Federal Courts.

(e) *Recording of an oral hearing.* Oral hearings will be recorded verbatim. A transcript of a recording may be purchased by a party, at its own expense, from the recording service.

§ 134.223 Evidence.

(a) *Applicability of the Federal Rules of Evidence.* Unless contrary to a particular rule in this part, or it is otherwise ordered by the Judge, the Federal Rules of Evidence will be used as a general guide in all cases before OHA.

(b) *Admissibility of hearsay.* Hearsay evidence is admissible if it is deemed by the Judge to be relevant and reliable.

(c) *Certain decisions based upon the written administrative record.* Unless it is determined by the Judge, upon motion, that there has been a substantial showing, based upon credible evidence, that the SBA determination in question may have resulted from bad faith or improper behavior, any MED program appeal arising under § 134.103(j)(1) of this part will be decided solely on a review of the written administrative record.

(d) *Remand for further consideration.* If, upon a MED program appeal arising under § 134.103(j)(1) of this part, the Judge determines that, due to the absence in the written administrative record of the reasons upon which the determination in question was based, the administrative record is insufficient to decide whether the determination is arbitrary, capricious, or contrary to law, the Judge will remand the case for further consideration. The Judge will retain jurisdiction of the matter during the period of remand.

§ 134.224 Standards for decision.

The decision of a Judge in cases other than those involving MED program appeals arising under § 134.103(j)(1) of this part will be based upon a preponderance of the evidence. In MED program appeals arising under § 134.103(j)(1) of this part, the determination will be sustained unless it is found to be arbitrary, capricious, or contrary to law.

§ 134.225 The record.

(a) *Contents of record.* The record of a case before OHA will consist of all pleadings, motions, and other non-evidentiary submissions, all admitted evidence, all orders and decisions, and any transcripts of proceedings in the case.

(b) *Public access.* Except for information subject to a protective order, proprietary or confidential information withheld in accordance with this part, or any other information which is excluded from disclosure by law or regulation, the record will be available at OHA for public inspection during normal business hours. Copies of the documents available for public inspection may be obtained by the public upon payment of any duplication charges.

(c) *Closure of the pre-decisional record.* The Judge will set the date upon which the pre-decisional record of the case will be closed, and after which no additional evidence or argument will be accepted.

§ 134.226 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of relevant law, reasons for such findings and conclusions, and any relief ordered. The contents of the record will constitute the exclusive basis for a decision.

(b) *Time limit for certain decisions.* Decisions pertaining to the collection of debts owed to SBA and the United States under the Debt Collection Act of 1982 and part 140 of this chapter must be rendered within 60 days after a petition is filed. Decisions pertaining to MED program appeals arising under § 134.103(j)(1) of this part will be rendered, insofar as practicable, within 90 days after a petition is filed.

(c) *Service.* OHA will serve a copy of all written decisions on:

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

§ 134.227 Finality of decisions.

(a) *Final decisions.* A decision on the merits shall be a final decision, upon issuance, in the following cases:

(1) Proceedings concerning the collection of debts owed to SBA and the United States, under the Debt Collection Act of 1982 and part 140 of this chapter; and

(2) Appeals from determinations relating to SBA's MED program.

(b) *Initial decisions.* All decisions on the merits other than those set forth in paragraph (a) of this section are initial decisions. However, unless a request for review is filed pursuant to § 134.228(a), an initial decision shall become the final decision of SBA 30 days after its issuance.

§ 134.228 Review of initial decisions.

(a) *Request for review.* Within 30 days after the service of an initial decision, any party, or SBA's Office of General Counsel, may serve and file with OHA a request for review. A request for review must set forth the filing party's specific objections to the initial decision, and any alleged support for those objections in the record, or in case law, statute, regulation, or SBA policy. A party must serve its request for review upon all other parties and upon SBA's Office of General Counsel.

(b) *Response to a request for review.* Within 20 days after the service of a request for review, any party so served, or SBA's Office of General Counsel, may serve and file with OHA a response. A party must serve its response upon all other parties and upon SBA's Office of General Counsel.

(c) *Transfer of the record to the Administrator for review.* Upon receipt of all possible responses, but in no case later than 30 days after the filing of a request for review, OHA will transfer the record of the case to the Administrator. The Administrator, or his or her designee, will then review the record.

(d) *Standard of review.* Upon review, the Administrator, or his or her designee, will sustain the initial decision unless it is based on an erroneous finding of fact or an erroneous interpretation or application of case law, statute, regulation, or SBA policy.

(e) *Order.* After consideration of the record, the Administrator, or his or her designee, will:

(1) Affirm, reverse, or modify the initial decision, which determination will become the final decision of the SBA upon issuance; or

(2) Remand the initial decision to the Judge for appropriate further proceedings.

§ 134.229 Termination of jurisdiction.

The jurisdiction of OHA will terminate upon the issuance of a decision by a Judge resolving all material issues of fact and law unless the case is subsequently remanded for appropriate further proceedings, pursuant to § 134.228(e)(2) of this part.

Subpart C—Rules of Practice for Appeals From Size Determinations and SIC Code Designations

§ 134.301 Scope of the rules in subpart C.

The rules of practice in subpart C of this part apply to all appeals to OHA from:

(a) Formal size determinations made by an SBA Government Contracting Area Office, under part 121 of this chapter, or by a Disaster Area Office, in connection with applications for disaster loans; and

(b) SIC code designations, pursuant to part 121 of this chapter.

§ 134.302 Who may appeal.

Appeals from size determinations and SIC code designations may be filed with OHA by the following, as applicable:

(a) Any person adversely affected by a size determination;

(b) Any person adversely affected by a SIC code designation. However, with respect to a MED contract, only the Associate Administrator for Minority Enterprise Development may appeal a SIC code designation;

(c) The Associate or Assistant Administrator for the SBA program involved, through SBA's Office of General Counsel; and

(d) The procuring agency contracting officer responsible for the procurement affected by a size determination.

§ 134.303 No absolute right to an appeal from a size determination.

It is within the discretion of the Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, he or she will issue an order denying review, and specifying the reasons for the decision.

§ 134.304 Commencement of appeals from size determinations and SIC code designations.

(a) *When appeals must be commenced.* Appeals from size determinations and SIC code designations must be commenced by serving and filing a notice of appeal as follows:

(1) If appeal is from a size determination in a pending procurement or pending Government property sale, then the notice of appeal must be served and filed within 15 days after service of the size determination;

(2) If appeal is from a size determination other than one in a pending procurement or pending Government property sale, then the notice of appeal must be served and filed within 30 days after service of the size determination;

(3) If appeal is from a SIC code designation, then the notice of appeal must be served and filed within 10 days after the issuance of the initial invitation for bids or initial request for proposals or quotations.

(b) *Untimely appeals.* An untimely appeal will be dismissed. However, an appeal which is untimely under paragraph (a)(1) of this section, with respect to a pending procurement or sale, may, if timely under paragraph (a)(2) of this section, proceed with respect to future procurements or sales.

§ 134.305 The appeal petition.

(a) *Form.* There is no required format for an appeal petition. However, it must include the following information:

(1) The Area Office which issued the size determination, or the contracting office which designated the SIC code;

(2) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;

(3) A full and specific statement as to why the size determination or SIC code designation is alleged to be in error, together with argument supporting such allegations; and

(4) The name, address, telephone number, and signature of the appellant or its attorney.

(b) *Who must be served with a size determination appeal petition.* The appellant must serve the appeal petition upon each of the following:

(1) The SBA official who issued the size determination;

(2) The contracting officer responsible for the procurement affected by a size determination;

(3) The business concern whose size status is at issue;

(4) All persons who filed protests; and

(5) SBA's Office of General Counsel.

(c) *Who must be served with a SIC code appeal petition.* The appellant must serve the contracting officer who made the SIC code designation.

(d) *Certificate of service.* The appellant must attach to the appeal petition a signed certificate identifying each person or governmental agency which was served with the notice of appeal, and how and when each of those persons or governmental agencies was served.

(e) *Dismissal of insufficient appeal petitions.* An appeal petition which does not contain all of the information required in paragraph (a) of this section may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of a respondent.

§ 134.306 Transmission of the case file.

Upon receipt of an appeal petition pertaining to a size determination, the Area Office which issued the size determination must immediately send to OHA the entire case file relating to that determination. Upon receipt of an appeal petition pertaining to a SIC code designation, the contracting officer who designated the SIC code must immediately send to OHA the solicitation relating to that designation.

§ 134.307 Service and filing requirements.

The provisions of § 134.204 of this part apply to the service and filing of all pleadings and other submissions permitted under this subpart.

§ 134.308 Limitation on the submission of new evidence in appeals from size determinations.

(a) *When new evidence may be submitted.* Evidence not previously presented to the Area Office which issued the size determination being appealed will not be considered by a Judge unless:

(1) The Judge, on his or her own initiative, orders the submission of such evidence; or

(2) A motion is served and filed establishing good cause for the submission of such evidence.

(b) *Adverse inference resulting from the failure to comply with an order to submit evidence.* If the submission of evidence is ordered by a Judge, and the party in possession of that evidence does not submit it, the Judge may draw adverse inferences against that party.

§ 134.309 Response to an appeal petition.

(a) *Who may respond.* Any person served with an appeal petition, or any other interested person, may serve and file a response supporting or opposing the appeal. The response should present argument.

(b) *Time limits for serving and filing a response.* Unless otherwise specified by the Judge, a respondent must serve and file a response within 10 days after service of the appeal petition upon it.

(c) *Who must be served.* The respondent must serve its response upon the appellant and upon each of the persons identified in the certificate of service attached to the appeal petition pursuant to § 134.305 of this part.

(d) *Reply to a response.* No reply to a response will be permitted unless the Judge directs otherwise.

§ 134.310 Discovery.

Discovery will not be permitted in appeals from size determinations or SIC code designations.

§ 134.311 Oral hearings.

Oral hearings will not be held in appeals from SIC code designations, and will be held in appeals from size determinations only upon a finding by the Judge of extraordinary circumstances. If such an oral hearing is ordered, the proceeding shall be conducted in accordance with those rules of subpart B of this part as the Judge deems appropriate.

§ 134.312 Evidence.

To the extent the rules in this subpart permit the submission of evidence, the provisions of §§ 134.223 (a) and (b) apply.

§ 134.313 Applicability of subpart B provisions.

The following sections from subpart B apply to an appeal under this subpart: § 134.207(a) (pertaining to amendments to pleadings); § 134.208 (Representation in cases before OHA); § 134.209 (Requirement of signature); § 134.210 (Intervention); § 134.211 (Motions); § 134.214 (Subpoenas); § 134.218 (Judges); § 134.219 (Sanctions); and § 134.220 (Prohibition against *ex parte* communications).

§ 134.314 Standard of review.

The standard of review is whether the size determination or SIC code designation was based on clear error of fact or law.

§ 134.315 The record.

Where relevant, the provisions of §§ 134.225 (a), (b), and (c) apply. In an appeal under this subpart, the contents of the record also include the case file or solicitation submitted to OHA in accordance with § 134.306.

§ 134.316 The decision.

(a) *Contents.* Following closure of the record, the Judge will issue a decision containing findings of fact and conclusions of law, reasons for such findings and conclusions, and any relief ordered.

(b) *Finality of the decision.* The decision is the final decision of the SBA and becomes effective upon issuance.

(c) *Service.* OHA will serve a copy of all written decisions on:

(1) Each party, or, if represented by counsel, on its counsel; and

(2) SBA's General Counsel, or his or her designee, if SBA is not a party.

§ 134.317 Termination of jurisdiction.

The jurisdiction of OHA will terminate upon the issuance of a decision.

§ 134.318 Return of the case file.

Upon termination of jurisdiction, OHA will return the case file to the transmitting Area Office. The remainder of the record will be retained by OHA.

Subpart D—Implementation of the Equal Access to Justice Act

§ 134.401 What is the purpose of this subpart?

The Equal Access to Justice Act, 5 U.S.C. 504, establishes procedures by which prevailing parties in certain administrative proceedings may apply for reimbursement of fees and other expenses. Eligible parties may receive awards when they prevail over SBA, unless SBA's position in the proceeding was ''substantially justified'' or special circumstances make an award unjust. The rules of this subpart which follow explain which OHA proceedings are covered, who may be eligible for an award of fees and expenses, and how to apply for such an award.

§ 134.402 Under what circumstances may I apply for reimbursement?

You may apply for reimbursement under this subpart if you meet the eligibility requirements in § 134.406 and you prevail over SBA in a final decision in:

(1) The type of administrative proceeding which qualifies as an ''agency adversary adjudication'' under § 134.403; or

(2) An ancillary or subsidiary issue in that administrative proceeding that is sufficiently significant and discrete to merit treatment as a separate unit; or

(3) A matter which the agency has designated in its order for hearing as an ''agency adversary adjudication'' under 5 U.S.C. 554.

§ 134.403 What is an agency adversary adjudication?

For purposes of this subpart, agency adversary adjudications are administrative proceedings before OHA which involve SBA as a party and which are required to be conducted by an Administrative Law Judge (''ALJ''). These adjudications (''administrative proceedings'') include those proceedings listed in §§ 134.103(a), 134.103(i), and 134.103(j)(1), but do not include other OHA proceedings such as those listed in § 134.103(k). In order for an administrative proceeding to qualify, SBA must have been represented by counsel or by another representative who enters an appearance and participates in the proceeding.

§ 134.404 What benefits may I claim?

You may seek reimbursement for certain reasonable fees and expenses incurred in prosecuting or defending a claim in an administrative proceeding.

§ 134.405 Under what circumstances are fees and expenses reimbursable?

(a) If you are a prevailing eligible party, you may receive an award for reasonable fees and expenses unless the position of the agency in the proceeding is found by the ALJ to be ''substantially justified'', or special circumstances exist which make an award unjust. The ''position of the agency'' includes not only the position taken by SBA in the administrative proceeding, but also the position which it took in the action which led to the administrative proceeding. No presumption arises that SBA's position was not substantially justified simply because it did not prevail in a proceeding. However, upon your assertion that the position of SBA was not substantially justified, SBA will be required to establish that its position was reasonable in fact and law.

(b) The ALJ may reduce or deny an award for reimbursement, if you have unreasonably protracted the administrative proceeding or if other circumstances would make the award unjust.

(c) Awards for fees and expenses incurred before the date on which an administrative proceeding was initiated are allowable only if you can demonstrate that they were reasonably incurred in preparation for the proceeding.

§ 134.406 Who is eligible for possible reimbursement?

(a) You are eligible for possible reimbursement if:

(1) You are an individual, sole proprietorship, partnership, corporation, association, organization, or unit of local government; and

(2) You are identified as a party in a petition or order to show cause; and

(3) You are the prevailing party; and

(4) You meet certain net worth and employee eligibility requirements set forth in § 134.407.

(b) You are not eligible for possible reimbursement if you participated in the administrative proceeding only on behalf of persons or entities that are ineligible.

§ 134.407 How do I know which eligibility requirement applies to me?

Follow this chart to determine your eligibility. You should calculate your net worth and the number of your employees as of the date the administrative proceeding was initiated.

If your participation in the proceeding was:	Eligibility requirements:
For individual or personal interests	Personal net worth may not exceed 2 million dollars.
As sole owner of an unincorporated business	Personal net worth may not exceed 7 million dollars and No more than 500 employees.
As a partnership, corporation, association, organization, or unit of local government.	Business net worth may not exceed 7 million dollars and No more than 500 employees.
As a charitable or other tax exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).	No net worth limitations and No more than 500 employees.
As a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).	No net worth limitations and No more than 500 employees.

§ 134.408 What are the special rules for calculating net worth and number of employees?

(a) Your net worth must include the value of any assets disposed of for the purpose of meeting an eligibility standard, and must exclude any obligation incurred for that purpose. Transfers of assets, or obligations incurred, for less than reasonably equivalent value will be presumed to have been made for the purpose of meeting an eligibility standard.

(b) If you are a sole owner of an unincorporated business, or a partnership, corporation, association, organization, or unit of local government, your net worth must include the net worth of all of your affiliates. ''Affiliates'' are corporations or other business entities which directly or indirectly own or control a majority of the voting shares or other ownership interests in the applicant concern. ''Affiliates'' are also corporations or other business entities in which the applicant concern directly or indirectly owns or controls a majority of the voting shares or other ownership interests.

(c) Your employees include all those persons regularly working for you at the time the administrative proceeding was initiated, whether or not they were at work on that date. Part-time employees must be included on a proportional basis. You must include the employees of all your affiliates in your total number of employees.

§ 134.409 What is the difference between a fee and an expense?

A fee is a charge to you for the professional services of attorneys, agents, or expert witnesses rendered in connection with your case. An expense is the cost to you of any study, analysis, engineering report, test, project, or similar matter prepared in connection with your case.

§ 134.410 Are there limitations on reimbursement for fees and expenses?

(a) Awards will be calculated on the basis of fees and expenses actually incurred. If services were provided by one or more of your employees, or were made available to you free, you may not seek an award for those services. If services were provided at a reduced rate, fees and expenses will be calculated at that reduced rate.

(b) In determining the reasonableness of the fees for attorneys, agents or expert witnesses, the ALJ will consider:

(1) That provider's customary fee for like services;

(2) The prevailing rate for similar services in the community in which that provider ordinarily performs services;

(3) The time actually spent in representing you; and

(4) The time reasonably spent in light of the difficulty and complexity of the issues.

(c) An award for the fees of an attorney or agent may not exceed $75 per hour, and an award for the fees of an expert witness may not exceed $25 per hour, regardless of the rate charged.

(d) An award for the reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on your behalf may not exceed the prevailing rate payable for similar services, and you may be reimbursed only if the study or other matter was necessary to the preparation of your case.

§ 134.411 What should I include in my application for an award?

(a) Your application must be in the form of a written petition which is served and filed in accordance with § 134.204 of this part. It must contain the following information:

(1) A statement that OHA has jurisdiction over the case pursuant to § 134.103(g);

(2) An identifying reference to the administrative proceeding for which you are seeking an award;

(3) A statement that you have prevailed, and a list of each issue in which you claim the position of SBA was not substantially justified;

(4) Whether you are an individual, sole proprietorship, partnership, corporation, association, organization, or unit of local government;

(5) Your net worth and number of employees as of the date the administrative proceeding was initiated, or a statement that one or both of these eligibility requirements do not apply to you;

(6) The amount you are seeking;

(7) A description of any affiliates (as that term is defined in § 134.408), or a statement that no affiliates exist;

(8) A statement that the petition and any attached statements and exhibits are true and complete to the best of your knowledge and that you understand a false statement on these documents is a felony punishable by fine and imprisonment under 18 U.S.C. 1001; and

(9) Your name, address, and telephone number, and the signature of you or your attorney.

(b) You should follow this chart to determine which attachments must be included with your petition:

Party	Required attachment
Individual	Net worth exhibit and Statement of fees and/or expenses for the services of each provider for which you seek reimbursement.
Sole owner of unincorporated business or Partnership, corporation, association, organization, or unit of local government.	Net worth exhibit and Statement of fees and/or expenses for the services of each provider for which you seek reimbursement.
Organization qualified as tax exempt under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).	Copy of a ruling by the Internal Revenue Service that you qualify as a 501(c)(3) organization or Statement that you were listed in the current edition of IRS Bulletin 78 as of the date the administrative proceeding was initiated, and Statement of fees and/or expenses for the services of each provider for which you seek reimbursement.
Tax exempt religious organization not required to obtain a ruling from the Internal Revenue Service on its exempt status.	Description of your organization and the basis for your belief you are exempt and Statement of fees and/or expenses for the services of each provider for which you seek reimbursement.
Cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).	Copy of your charter or articles of incorporation and Copy of your bylaws and Statement of fees and expenses for the services of each provider for which you seek reimbursement.

§ 134.412 What must a net worth exhibit contain?

(a) A net worth exhibit may be in any format, but it must:

(1) List all assets and liabilities for you and each affiliate in detail sufficient to show your eligibility;

(2) Aggregate net worth for you and all affiliates; and

(3) Describe any transfers of assets or obligations incurred by you or your affiliates within one year of the initiation of the administrative proceeding which have reduced your total net worth below the eligibility ceiling, or state that no such transfers occurred.

(b) The net worth exhibit must be filed with your petition, but will not be part of the public record of the proceeding. Further, in accordance with the provisions of § 134.204(g), you do not have to serve your net worth exhibit on other parties.

§ 134.413 What documentation do I need for fees and expenses?

You must submit a separate itemized statement or invoice for the services of each provider for which you seek reimbursement. All expenses claimed must be verifiable. Each separate statement or invoice must contain:

(a) The hours worked in connection with the proceeding by each individual providing a billable service;

(b) A description of the specific services performed by these individuals;

(c) The rate at which fees were computed for each individual working on your case;

(d) Where applicable, a description of any study, analysis, report, test, project, or other similar matter prepared in connection with your case;

(e) The total charged by the provider on that statement or invoice; and

(f) The provider's verification that the statement or invoice is true to the best of his or her knowledge and that he or she understands that a false statement is punishable by fine and imprisonment under 18 U.S.C. 1001.

§ 134.414 What deadlines apply to my petition for an award and where do I send it?

After you have prevailed in an administrative proceeding or in a discrete unit thereof, you must serve, and file with OHA, your written petition for an award, and its attachments, no later than 30 days after the decision in the administrative proceeding becomes final under § 134.227 of this part. The deadline for filing a petition for an award may not be modified. If SBA or another party requests review of the decision in the underlying administrative proceeding, your request for an award for fees and expenses may still be filed, but it will not be considered by the ALJ until a final decision is rendered.

§ 134.415 How will proceedings relating to my application for fees and expenses be conducted?

Proceedings will be conducted in accordance with the provisions in subpart B of this part.

§ 134.416 How will I know if I receive an award?

The ALJ will issue an initial decision on the merits of your request for an award which will become final in 30 days unless a request for review is filed under § 134.228 of this part. The decision will include findings on your eligibility, on whether SBA's position was substantially justified, and on the reasonableness of the amount you requested. Where applicable, there will also be findings on whether you have unduly protracted the proceedings or whether other circumstances make an award unjust, and an explanation of the reason for the difference, if any, between the amount requested and the amount awarded. If you have sought an award against more than one federal agency in the administrative proceeding, the decision will allocate responsibility for payment among the agencies with appropriate explanation.

§ 134.417 May I seek review of the ALJ's decision on my award?

You may request review of the ALJ's decision on your award by filing a request for review in accordance with § 134.228. A request for review must be filed within 30 days of service of the ALJ's initial decision. You may also seek judicial review of the decision of the ALJ as provided in 5 U.S.C. 504(c)(2). For purposes of judicial review, the initial decision of the ALJ is not an appealable ''determination'' under that statute until it becomes a final decision as provided in § 134.227. Judicial review of the ALJ's decision on your award must be requested within 30 days of the final decision.

§ 134.418 How are awards paid?

If you are seeking payment of an award, you must submit a copy of the ALJ's final award to SBA along with your certification that you are not seeking review of the ALJ's decision in the award proceeding. The request must be sent to the Chief Financial Officer, Office of Financial Operations, SBA, P.O. Box 205, Denver, CO 80201–0205. SBA will pay you the amount awarded within 60 days of receipt of your request unless it is notified that you or another party has sought judicial review of the ALJ's decision on the award or of the decision in the underlying administrative proceeding.

PART 132—[REMOVED]

2. Part 132 is hereby removed.

Dated: November 13, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28508 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 142

Program Fraud Civil Remedies Act Regulations

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would renumber, reorganize, condense and rewrite in plain language the existing regulation implementing the program ''Fraud Civil Remedies Act of 1986''. The goal of the plain language style is to eliminate cumbersome wording, redundancies and ambiguities. The goal of the reorganization and revision is to make this part consistent in practice and procedure with other parts of this title and to clarify requirements under this regulation and applicable statutes of the United States.

DATES: Comments must be submitted on or before December 27, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader, (142) Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Cheri Wolff, Chief Counsel for General Litigation; Office of General Counsel, at (202) 205–6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to each federal agency, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule reorganizes and partially redrafts former provisions for clarity and user-friendliness. Extensive renumbering was necessary for

reorganization, simplification and clarification of existing provisions. No substantive changes to existing provisions are proposed.

Section By Section Analysis

As background, the following section by section analysis discusses each provision of Part 142 that would be affected by this proposed rule:

Proposed section 142.1, ''Overview of Regulations,'' corresponds to section 142.1 of the existing part. The proposed section is revised to reflect the intent of the revisions to this Part. Modifications to the text are intended to eliminate confusion as to the purpose of the part and the proposed revision as a whole, and do not represent substantive change.

Proposed sections 142.2–142.6 correspond to the definitions found in existing sections 142.2 and 142.3. The proposed rules would renumber and rewrite in plain language the definitions and explanations applicable to this Part. Duplication is avoided in this section, and practice and procedure under this Part are made more consistent with practice and procedure under other Parts of this title.

Proposed sections 142.7–142.8 and 142.40, correspond to existing sections 142.4 and 142.5. The proposed rule would be renumbered and revised. The section is condensed and rewritten in plain language.

Proposed sections 142.90 and 142.11, correspond to existing section 142.7. The proposed rule would be renumbered and revised. The sections are condensed and rewritten in plain language.

Proposed section 142.10, corresponds to existing section 142.6. The proposed rule would be renumbered and revised. The section is condensed and rewritten in plain language.

Proposed section 142.12, corresponds to existing section 142.9. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.13, corresponds to existing section 142.10. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.14, corresponds to existing section 142.12. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.15, corresponds to existing section 142.13. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.16, corresponds to existing section 142.17. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.17, corresponds to existing section 142.18. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.18, corresponds to existing section 142.16. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.19, corresponds to existing section 142.28. The proposed rule would be renumbered and revised. The section would be moved, condensed and rewritten in plain language.

Proposed section 142.20, corresponds to existing sections 142.8 and 142.26. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.21, corresponds to existing sections 142.30 and 142.35. The proposed rule would be renumbered and revised, condensed and rewritten in plain language.

Proposed section 142.22, corresponds to existing sections 142.33 and 142.34. The proposed rule would be renumbered and revised. The sections would be moved, condensed and rewritten in plain language.

Proposed section 142.23, corresponds to existing sections 142.20 and 142.21. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.24, corresponds to existing sections 142.23 and 142.25. The proposed rule would be partially renumbered and revised. The sections are condensed and rewritten in plain language.

Proposed section 142.25, corresponds to existing section 142.24. The proposed rule would be revised, condensed and rewritten in plain language.

Proposed section 142.26, corresponds to existing section 142.15. The proposed rule would be renumbered, moved, condensed and rewritten in plain language.

Proposed section 142.27, corresponds to existing section 142.29. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.28, corresponds to existing section 142.32. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.29, corresponds to existing section 142.22. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.30, corresponds to existing section 142.37. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.31, corresponds to existing section 142.38. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed sections 142.32 through 142.36, correspond to existing subsections of section 142.39. The proposed rule would be renumbered and revised. The old section is broken into separate subgroups and then rewritten in plain language.

Proposed section 142.37, corresponds to existing section 142.42. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.38, corresponds to existing section 142.46. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Proposed section 142.39, corresponds to existing sections 142.43 and 142.44. The proposed rule would be renumbered and revised. The sections are moved, condensed and rewritten in plain language.

Proposed section 142.40, corresponds to existing sections 142.4 and 142.5. The proposed rule would be renumbered and revised. The sections are moved, condensed and rewritten in plain language.

Proposed section 142.41, corresponds to existing section 142.14. The proposed rule would be renumbered and revised. The section is moved, condensed and rewritten in plain language.

Existing sections 142.2, 142.11, 142.19, 142.31, 142.36, 142.40, 142.45 and 142.47 are deleted in their current form as duplicative and confusing.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule would renumber, reorganize and rewrite the existing regulation for clarity and ease of use. Contracting opportunities and financial assistance for small business would not be affected by this proposed rule. Therefore, it is

not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 142

Administrative practice and procedure; Claims; Fraud; Penalties.

For the above reasons, SBA proposes to revise Part 142 of Title 13 of the Code of Federal Regulations as follows:

PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

Authority: 15 U.S.C. 634(b), 31 U.S.C. 3803(g)(2).

Overview amd Definitions

§ 142.1 Overview of regulations.

(a) *Statutory basis.* This Part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 (''the Act''). The Act provides SBA and other federal agencies with an administrative remedy to impose civil penalties and assessments against persons making false claims and statements. The Act also provides due process protections to all persons who are subject to administrative proceedings under this Part.

(b) *Possible remedies for program fraud.* In addition to any other penalty which may be prescribed by law, a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than $5,000 for each statement or claim, regardless of whether property, services, or money is actually delivered or paid by SBA. If SBA has made any payment, transferred property, or provided services in reliance on a false claim, the person submitting it is also subject to an assessment of not more than twice the amount of the false claim. This assessment is in lieu of damages sustained by SBA because of the false claim.

§ 142.2 What kind of conduct will result in program fraud enforcement?

(a) Any person who makes, or causes to be made, a false, fictitious, or fraudulent claim or written statement to SBA is subject to program fraud enforcement. A person means any individual, partnership, corporation, association, or other legal entity.

(b) If more than one person makes a false claim or statement, each person is liable for a civil penalty. If more than one person makes a false claim which has induced SBA to make payment, an assessment is imposed against each person. The liability of each such person to pay the assessment is joint and several.

(c) No proof of specific intent to defraud is required to establish liability under this Part.

§ 142.3 What is a claim?

(a) Claim means any request, demand, or submission—

(1) Made to SBA for property, services, or money;

(2) Made to a recipient of property, services, or money from SBA or to a party to a contract with SBA for property or services, or for the payment of money. This provision applies only when the claim is related to the property, services or money from SBA or to the contract with SBA; or

(3) Made to SBA which decreases an obligation to pay or account for property, services, or money.

(b) A claim can relate to grants, loans, insurance, or other benefits, and includes SBA guaranteed loans made by participating lenders. A claim is made when it is received by SBA, an agent, fiscal intermediary, or other entity acting for SBA, or when it is received by the recipient of property, services, or money, or the party to the contract.

(c) Each voucher, invoice, claim form, or individual request or demand for property, services, or money constitutes a separate claim.

§ 142.4 What is a statement?

Statement means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or with respect to a contract, bid or proposal for a contract, grant, loan or other benefit from SBA. SBA must provide some portion of the money or property in connection with the contract, bid, grant, loan, or benefit, or be potentially liable to another party for any portion of the money or property under such contract, loan, grant, or

benefit. A statement is made, presented, or submitted to SBA when it is received by SBA or an agent, fiscal intermediary, or other entity acting for SBA.

§ 142.5 What is a false claim or statement?

(a) A claim submitted to SBA is a false claim if the person making the claim, or causing the claim to be made, knows or has reason to know that the claim

(1) Is false, fictitious or fraudulent;

(2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent;

(3) Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) A statement submitted to SBA is a false statement if the person making the statement, or causing the statement to be made, knows or has reason to know that the statement

(1) Asserts a material fact which is false, fictitious, or fraudulent; or

(2) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement. In addition, the statement must contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

§ 142.6 What does the phrase ''know or have reason to know'' mean?

A person knows or has reason to know (that a claim or statement is false) if the person:

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent; or

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Procedures Leading to Issuance of a Complaint

§ 142.7 Who investigates program fraud?

Allegations that a false claim or statement has been made are investigated by the Inspector General, or his designee. As the investigating official, the Inspector General, or his designee, has authority under the Program Fraud Civil Remedies Act and the Inspector General Act of 1978, as amended, to issue administrative subpoenas for the production of records and documents. The methods for serving a subpoena are set forth in Part 101 of this title.

§ 142.8 What happens if program fraud is suspected?

If the investigating official concludes that an action under this Part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to a reviewing official. The reviewing official is the General Counsel or his designee. If, based on the report of the investigating official, the reviewing official determines there is adequate evidence to believe that a person submitted a false claim or statement under this Part, the reviewing official transmits to the Attorney General a written notice of the reviewing official's intention to refer the matter for adjudication. This notice will include the reviewing official's statements concerning:

(a) The reasons for the referral;

(b) The claims or statements upon which liability would be based;

(c) The evidence that supports liability;

(d) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;

(e) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(f) The likelihood of collecting the proposed penalties and assessments.

§ 142.9 When will SBA issue a complaint?

SBA will issue a complaint:

(a) If the Attorney General or his designee approves the referral of the allegations for adjudication and,

(b) In a case of submission of false claims, the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed $150,000. A group of related claims submitted at the same time includes only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted simultaneously as part of a single request, demand, or submission.

§ 142.10 What is contained in a complaint?

(a) A complaint is notice to the person alleged to be liable under 31 U.S.C. 3802 of the specific allegations being referred for adjudication and the person's right to request a hearing with respect to those allegations. The person alleged to have made false statements or to have submitted false claims to SBA is referred to as the defendant.

(b) The reviewing official may join in a single complaint false claims or statements that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

(c) The complaint will state that SBA is seeking to impose civil penalties, assessments, or both, against the persons named in the complaint and will also include:

(1) The allegations of liability against the defendant, including the statutory basis for liability, identification of the claims or statements that are the basis for the alleged liability, and the reasons liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments requested and for which the defendant may be held liable;

(3) A statement of a defendant's rights to request a hearing by filing an answer and to be represented by an attorney;

(4) Instructions for filing an answer to request a hearing;

(5) A statement that failure of a defendant to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments.

(d) The reviewing official will serve a complaint on the defendant and provide a copy to the Office of Hearings and Appeals (OHA). If a hearing is requested, an Administrative Law Judge (ALJ) from OHA will serve as the Presiding Officer.

§ 142.11 How will the complaint be served?

(a) The complaint must be served on a person alleged to be liable, or to a general partner of a partnership alleged to be liable, or to an executive officer or a director of a corporation or unincorporated association alleged to be liable, or to a person authorized by appointment or by law to receive process for the person named in the complaint.

(b) Service of a complaint may be effected by either of the following means:

(1) By mail. The complaint must be addressed to the Defendant at his or her residence or usual dwelling place, principal office or place of business, and must be sent by registered or certified mail (return receipt requested).

(2) By personal delivery.

(c) The complaint may be served by anyone 18 years of age or older.

(d) Service is complete when made in accordance with the preceding provisions.

(e) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

(f) Proof of service—

(1) When service is by registered or certified mail, the return postal receipt will serve as proof of service.

(2) When service is by personal delivery, an affidavit of the individual serving the complaint or written acknowledgment of receipt by the individual actually served or the defendant or a representative will serve as proof of service.

(g) At the same time the reviewing official serves the complaint, the defendant will be served with a copy of this Part and 31 U.S.C. §§ 3801–3812.

Procedures Following Service of a Complaint

§ 142.12 How does a defendant respond to the complaint?

(a) A defendant may request a hearing by filing an answer with the reviewing official and the Office of Hearings and Appeals within 30 days of service of the complaint. An answer will be considered a request for a hearing.

(b) In the answer, a defendant—

(1) Must admit or deny each of the allegations of liability contained in the complaint. A failure to deny an allegation is considered an admission;

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer which meets the requirements set forth in paragraph (b) of this section, the defendant may file with the reviewing official a general answer denying liability and requesting a hearing. In addition, the general answer may include a request for an extension of time in which to file a complete answer. A general answer must be filed within 30 days of service of the complaint.

(d) If the defendant files a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(e) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. Such answer must be filed with OHA and a copy must be served on the reviewing official.

§ 142.13 What happens if a defendant fails to file an answer?

(a) If a defendant does not file an answer within 30 days after service of the complaint, the reviewing official may refer the complaint to the ALJ.

(b) Once the complaint is referred, the ALJ will promptly serve on the defendant a notice that an initial decision will be issued.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed in the initial decision.

(e) The initial decision becomes final 30 days after it is issued.

(f) If, at any time before an initial decision becomes final, a defendant files a motion with the ALJ asking that the case be reopened and stating that extraordinary circumstances prevented the defendant from filing an answer, the initial decision is stayed until the ALJ makes a decision on the motion. The reviewing official may respond to the motion.

(g) If, in his motion to reopen, a defendant demonstrates extraordinary circumstances excusing his failure to file a timely answer, the ALJ will withdraw the initial decision, and grant the defendant an opportunity to answer the complaint.

(h) A decision by the ALJ to deny a defendant's motion to reopen a case is not subject to review or reconsideration.

§ 142.14 What happens once an answer is filed?

(a) When the reviewing official receives an answer, he must file the complaint and the answer with the ALJ, along with a designation of a representative.

(b) When the ALJ receives the complaint and the answer, the ALJ will promptly serve a notice of hearing upon the defendant and the representative for SBA. The notice of hearing is served in the same manner as the complaint, service of which is described in § 142.11.

(c) The notice shall include:

(1) The tentative time, place and nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the defendant's representative and the representative for SBA; and

(6) Such other matters as the ALJ deems appropriate.

Hearing Provisions

§ 142.15 What kind of hearing is contemplated?

The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and argue that he is not liable for the imposition of civil penalties, assessments, or both.

§ 142.16 At the hearing, what rights do the parties have?

(a) The parties to the hearing shall be the defendant and SBA. Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff in an action under the False Claims Act may participate in the hearing to the extent authorized by the provisions of that Act.

(b) Each party has the right to:

(1) Be represented by a representative;

(2) Request a pre-hearing conference and participate in any conference held by the ALJ;

(3) Conduct discovery;

(4) Agree to stipulations of fact or law which will be made a part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 142.17 What is the responsibility and authority of the ALJ?

The Presiding Officer at the hearings described herein and in 31 U.S.C. § 3803(d)(2)(B), is an Administrative Law Judge (ALJ). The ALJ has the authority set forth in § 134.218(b) of this Title.

§ 142.18 Can the reviewing official or ALJ be disqualified?

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon motion of any party, the reviewing official or ALJ in a particular case may be disqualified provided that:

(1) The motion is supported by an affidavit containing specific facts that support the party's belief that personal bias or other reason for disqualification exists, including the time and circumstances of the party's discovery of such facts;

(2) The motion and affidavit are promptly filed when the party discovers grounds for disqualification, or such objection will be deemed waived; and

(3) The party, or representative of record, certifies in writing that the motion is made in good faith.

(c) Once such a motion has been filed to disqualify the reviewing official, the ALJ will halt the proceedings until the matter of disqualification is resolved. If the ALJ determines that the reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the case will be promptly reassigned to another ALJ.

§ 142.19 How are issues brought to the attention of the ALJ?

Any application to the ALJ for an order or ruling is by motion. Motions must state the relief sought, the authority relied upon, and the facts alleged. Procedures for filing motions under this section are governed by section 134.211 of this Title.

§ 142.20 How are papers served?

Except for service of a complaint or a notice of hearing under section 142.11 and section 142.14(b) respectively, service of all papers is made by the manner prescribed by section 134.204 of this Title.

§ 142.21 How will the hearing be conducted and who has the burden of proof?

(a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the civil penalty or assessment. The hearing will be recorded and transcribed, and the transcript of testimony, exhibits admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for a decision by the ALJ.

(b) SBA must prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) A defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 142.22 How is evidence presented at the hearing?

(a) Witnesses at the hearing must testify orally under oath or affirmation unless otherwise ordered by the ALJ. At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition, a copy of which must be provided to all other parties, along with the last known address of the witness, in a manner which allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing.

(b) The ALJ determines the admissibility of evidence in accordance with § 134.223 (a) and (b).

§ 142.23 Are there limits on disclosure of documents or discovery?

(a) Upon written request to the reviewing official, the defendant may review all non-privileged, relevant and material documents, records and other material related to the allegations contained in the complaint. After paying SBA a reasonable fee for duplication, the defendant may obtain a copy of the records described.

(b) Upon written request to the reviewing official, the defendant may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. If the document would otherwise be privileged, only the portion of the document containing exculpatory information must be disclosed. As used in this section, the term ''information'' does not include legal materials such as statutes or case law obtained through legal research.

(c) The notice sent to the Attorney General from the reviewing official is not discoverable under any circumstances.

(d) Other discovery is available only as ordered by the ALJ and includes only those methods of discovery allowed by section 134.213(c) of this Title.

§ 142.24 Can witnesses be subpoenaed?

A party wishing to procure the appearance and testimony of any individual and/or documents and records at the hearing may request that the ALJ issue a subpoena. A written request for a subpoena must be filed with the ALJ not less than 15 days before the scheduled hearing date unless otherwise allowed by the ALJ for good cause. A subpoena shall be issued by the Presiding Officer, in the manner specified by section 134.214 of this Title.

§ 142.25 Can a party or witness object to discovery?

A party or prospective witness may file a motion to quash a subpoena or to limit discovery or the disclosure of evidence. Motions to limit discovery or to object to the disclosure of evidence are governed by § 134.213 (d) and (e) of this title. Motions to limit or quash subpoenas are governed by § 134.214(d) of this Title.

§ 142.26 Can a party informally discuss the case with the ALJ?

No. The proscription against and rules concerning ex parte communications with the ALJ are set forth in section 134.220 of this Title. This provision does not prohibit a party from communicating with any other employee of OHA solely for the purpose of inquiring about the status of a case or asking routine questions concerning administrative functions and procedures.

§ 142.27 Are there sanctions for misconduct?

The ALJ may sanction a person, including any party or representative, pursuant to the rules set forth at section 134.219 of this Title.

§ 142.28 Where is the hearing held?

The hearing is held in any judicial district of the United States:

(a) In which the defendant resides or transacts business; or

(b) In which the claim or statement on which liability is based was made, presented or submitted to SBA; or

(c) As agreed upon by the defendant and the ALJ.

§ 142.29 Are witness lists exchanged before the hearing?

(a) At least 15 days before the hearing or at such other time as ordered by the ALJ, the parties must exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements or transcripts of deposition testimony that the party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to an opposing party unless the ALJ finds good cause for the omission or that there is no prejudice to the objecting party.

(c) Unless a party objects within the time set by the ALJ, documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing.

Decisions and Appeals

§ 142.30 How is the case decided?

(a) The ALJ issues an initial decision based only on the record, which will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The ALJ serves the initial decision on all parties within 90 days after close of the hearing or after the time for submission of any post-hearing briefs, if permitted has expired. If the ALJ fails to meet this deadline, he or she shall promptly notify the parties of the reason for the delay set a new deadline.

(c) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint violate this Part; and

(2) If the defendant is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) The initial decision will include a description of the right of a defendant found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Administrator.

§ 142.31 Can a party request reconsideration of the initial decision?

(a) Any party may file a motion for reconsideration of the initial decision with the ALJ within 20 days of receipt of the Initial decision. If the initial decision was served by mail, there is a rebuttable presumption that the initial decision was received by the party 5 days from the date of mailing.

(b) A motion for reconsideration must set forth each matter claimed to have been erroneously decided and the nature of the alleged errors. The motion must be accompanied by a supporting brief.

(c) Any response to a motion for reconsideration must be filed within 20 days of receipt of the motion for reconsideration.

(d) The ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision.

(e) If the ALJ issues a revised initial decision upon motion of a party, that party may not file another motion for reconsideration.

§ 142.32 When does the initial decision of the ALJ become final?

(a) The initial decision of the ALJ becomes the final decision of SBA, and shall be binding on all parties 30 days after it is issued, unless any party timely files a motion for reconsideration or any defendant adjudged to have submitted a false claim or statement timely appeals to the SBA Administrator, as set forth in § 142.33.

(b) If the ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision, the ALJ's order on the motion for reconsideration becomes the final decision of SBA 30 days after the order is issued, unless a defendant adjudged to have submitted a false claim or statement timely appeals to the Administrator, as set forth in § 142.33, within 30 days of the ALJ's order.

§ 142.33 What are the procedures for appealing the ALJ decision?

(a) Any defendant who submits a timely answer and is found liable for a civil penalty or assessment in an initial decision may appeal the decision.

(b) The defendant may file a notice of appeal with the Administrator, at any time within the 30 day period following the issuance of an initial decision. At the same time, a copy of the notice of appeal must be served on all parties and the ALJ.

(c) If another party files a timely motion for reconsideration with the ALJ, the defendant's appeal will not be considered until the motion for reconsideration has been resolved.

(d) If a motion for reconsideration is timely filed, a notice of appeal may be filed at any time within the 30-day period following the ALJ's denial of the motion for reconsideration or issuance of a revised initial decision, whichever applies.

(e) A notice of appeal must be supported by a written brief specifying the reasons why the defendant believes the initial decision should be reversed or modified.

(f) SBA's representative may file a brief in opposition to the notice of appeal within 30 days of receiving the defendant's notice of appeal and supporting brief.

(g) The Administrator may extend the initial 30-day period for not more than an additional 30 days if the defendant files a request for an extension within the initial 30-day period and shows good cause.

(h) If a defendant timely files a notice of appeal, and the time for filing motions for reconsideration has expired, the ALJ forwards the record of the proceeding to the Administrator.

§ 142.34 Are there any limitations on the right to appeal to the Administrator?

(a) A defendant has no right to appear personally, or through a representative, before the Administrator.

(b) There is no right to appeal any interlocutory ruling by the ALJ.

(c) The Administrator will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that the failure to object was caused by extraordinary circumstances. If the appealing defendant demonstrates to the satisfaction of the Administrator that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the Administrator will remand the matter to the ALJ for consideration of the additional evidence.

§ 142.35 How does the Administrator dispose of an appeal?

(a) The Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The Administrator will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

§ 142.36 Can I obtain judicial review?

If the initial decision is appealed, the decision of the Administrator is the final decision of SBA and is not subject to judicial review unless the defendant files a petition for judicial review within 60 days after the date on which the Administrator serves the defendant with a copy of the final decision.

§ 142.37 What judicial review is available?

31 U.S.C. § 3805 authorizes judicial review of the final SBA decision imposing penalties or assessments hereunder, by the appropriate United States District Court and specifies the procedures for such review. If a defendant fails to file a judicial petition for review in a timely fashion, the final SBA decision is no longer subject to judicial review.

§ 142.38 Can the administrative complaint be settled voluntarily?

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this Part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Administrator has exclusive authority to compromise or settle a case under this Part at any time after the date on which the ALJ issues an initial

decision and before the initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise a case under this Part while any judicial review or any action to recover penalties and assessments are pending.

(e) The investigating official may recommend settlement terms for the reviewing official, the Administrator, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Administrator or the Attorney General, as appropriate.

§ 142.39 How are civil penalties and assessments collected?

31 U.S.C. 3806 and 3808(b) authorize the Attorney General to bring actions for collection of civil penalties and assessments imposed under this Part and specify the procedures for such actions. Actions to collect civil penalties and assessments may include administrative offset under 31 U.S.C. 3716. The penalties and assessments may not, however, be administratively offset against an overpayment of federal taxes (then or later owed) to the defendant by the United States.

§ 142.40 What if the investigation indicates criminal misconduct?

(a) This Part does not preclude or limit an investigating official's discretion to:

(1) Refer allegations of criminal misconduct directly to the Department of Justice for prosecution or for suit under the False Claims Act or other civil proceeding;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

(3) Issue subpoenas under other statutory authority.

(b) Nothing in this Part limits the requirement that SBA employees report suspected violations of criminal law to the SBA Office of Inspector General or to the Attorney General.

§ 142.41 How does SBA protect the rights of defendants?

The procedures implemented in this Part completely separate the functions of the investigating official, reviewing official, and the ALJ. In accordance with 31 U.S.C. § 3801, each of these officials fall under a separate organizational authority. Moreover, except for the purposes of settlement, the investigating official, reviewing official, and any employee or agent of SBA who takes part in investigating, preparing, or presenting a particular case may not in such case, or a factually related case, participate or advise in the initial decision or the review of the initial decision by the Administrator, except as a witness or a representative in public proceedings. This separation of functions and organization is designed to assure the independence and impartiality of each government official during every stage of the proceeding. The representative for SBA may be employed in the offices of either the investigating official or the reviewing official.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28516 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM95–8–000 and RM94–7–001]

Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities

November 17, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Proposed rule; availability of draft environment impact statement.

SUMMARY: The staff of the Federal Energy Regulatory Commission has prepared a draft environmental impact statement for the proposed rulemaking in this proceeding to satisfy the requirements of the National Environmental Policy Act.

DATES: Comments are due on or before January 8, 1996.

ADDRESSES: 888 First Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Mr. William Meroney, DEIS Project Manager, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street NE., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 or (800) 856–3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The staff of the Federal Energy Regulatory Commission has prepared a draft environmental impact statement (DEIS) for the proposed rulemaking referenced above to satisfy the requirements of the National Environmental Policy Act.

On July 12, 1995, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement for the Notice of Proposed Rulemaking and Request for Comments on Environmental Issues (NOI) (60 FR 36752, July 18, 1995).[1] The NOI described proposed cases for examination and established a procedure for public comments. Thirty-six comments were received in response to the NOI. A public meeting was held on September 8, 1995, in Washington, D.C. The most frequently raised issue involves air quality impacts, particularly the possible transport of nitrogen oxides (NOx) emissions by Midwestern generating plants to airsheds in the Northeast and the resulting impacts on ozone non-attainment areas in the Northeast.

Based on the comments and a careful analysis of the major issues, the staff developed a study that addresses the key potential environmental impacts of the rulemaking. The staff used a modeling approach that includes a detailed representation of the transmission grid. The model results and other analyses allow the staff to examine a series of other issues, including visibility; impacts on land, water and waste; and some potential mitigation options.

The DEIS has been placed in the public files of the FERC and is available for public inspection at:

[1] The proposed rule in this proceeding was published April 7, 1995 (60 FR 17662).

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426, (202) 208–1371.

Copies of the DEIS have been mailed to Federal agencies and individuals who requested copies of the DEIS in response to the NOI.

The DEIS will be available to the public on the Commission Posting System (CIPS). CIPS is an electronic bulletin board service which provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 or (800) 856–3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit.

Written comments are welcome on the DEIS. Please take notice that all written comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before January 8, 1996, reference Docket Nos. RM95–8–000 and RM94–7–001, and be addressed to:

Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426.

A copy of any comments should also be sent to:

Mr. William Meroney, DEIS Project Manager, Office of Economic Policy, 888 First Street NE., Washington, DC 20426.

In addition, commenters are asked to submit their written comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines.

After the comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the DEIS.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28846 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 498

RIN 0960–AE23

Civil Monetary Penalties, Assessments and Recommended Exclusions

AGENCY: Office of the Inspector General (OIG), SSA.

ACTION: Proposed rule.

SUMMARY: We propose to add new rules that would establish procedures to impose civil monetary penalties and assessments against certain Old-Age, Survivors, and Disability Insurance beneficiaries, Supplemental Security Income recipients, third parties, physicians, medical providers, and other individuals and entities who make false statements or representations for use in determining any right to or amount of title II or title XVI benefits under the Social Security Act. These proposed rules would implement the civil monetary penalty provisions of section 206(b) of the Social Security Independence and Program Improvements Act of 1994.

DATES: To be sure that your comments are considered, we must receive them no later than January 26, 1996.

ADDRESSES: Comments should be submitted in writing to the Inspector General of the Social Security Administration, c/o Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to ''regulations@ssa.gov'' or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Judith A. Kidwell, Office of the Inspector General, (410) 965–9750 or Glenn Sklar, Office of the General Counsel, (410) 965–6247.

SUPPLEMENTARY INFORMATION:

Background

These proposed rules would implement the civil monetary penalty (CMP) provisions of section 206(b) of the Social Security Independence and Program Improvements Act of 1994, Public Law (Pub. L.) 103–296, which added section 1129 of the Social Security Act (the Act), effective October 1, 1994. Section 108 of Pub. L. 103–296 made additional conforming amendments to section 1129, effective March 31, 1995, to reflect the Social Security Administration's (SSA) new status as an independent agency.

Section 206 provides expanded authority for SSA to prevent, detect, and terminate fraudulent claims for Old-Age, Survivors, and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) benefits. The new CMP provision contained in section 1129 of the Act is intended to deter applicants, beneficiaries, employees, employers, interpreters, physicians, medical providers, recipients, representative payees, representatives, translators, and other individuals and entities from providing false or misleading information, or omitting material information in connection with benefit claims.

Previously, the SSA relied on provisions of the Civil False Claims Act (CFCA) or the Program Fraud Civil Remedies Act (PFCRA) for imposing CMPs against persons who submitted fraudulent claims to SSA. These statutory provisions have been of limited usefulness in imposing CMPs for SSA fraud, inasmuch as the CFCA requires the Department of Justice to initiate civil action in Federal court to impose penalties, and the applicability of PFCRA is restricted to fraudulent action on initial benefit applications in some circumstances. The new CMP and assessment authority provides an alternative censure in cases not acceptable for action under the CFCA or the PFCRA.

Section 1129 of the Act provides that the Commissioner may delegate authority under this section to the Inspector General of the Social Security Administration (IG). On June 28, 1995, the Commissioner delegated to the IG authority under the CMP provisions in section 1129. However, the Commissioner has retained the authority to conduct hearings and to review initial hearing decisions related to the imposition of administrative sanctions.

Provisions of the Proposed Rule

These proposed regulations reflect and implement section 1129 of the Act. Section 1129 provides the Agency with direct authority, after approval by the Department of Justice, to impose a CMP and assessment against any individual, organization, agency, or other entity that knowingly makes or causes to be made a statement or representation of a

material fact for use in determining initial or continuing rights to OASDI or SSI benefit payments when such statement or representation is false, misleading, or omits a material fact. Under section 1129, each offense is subject to a penalty of not more than $5,000 and an assessment, in lieu of damages, of not more than twice the amount of benefits paid as a result of such statement, representation or omission. In addition, medical providers or physicians who commit an offense described in section 1129 may be subject to exclusion from participation in the Medicare program (title XVIII of the Act). Specifically, section 1129(a)(1) provides that the Commissioner may make a determination, as part of the same proceeding in which penalties and assessments are determined, to recommend that the Secretary of Health and Human Services (Secretary) exclude as provided in section 1128 of the Act, such medical providers or physicians from participating in the Medicare program. Because of policy issues that need to be addressed and coordinated with the Department of Health and Human Services, we are reserving this issue at this time.

The criteria for exclusions of physicians and medical providers are in many instances discretionary and involve policy issues within the Department of Health and Human Services. The SSIPIA amended section 1128 of the Act to provide that fraud under section 1129 of the Act constitutes a basis for exclusion from the Medicare and Medicaid programs by the Secretary.

We are discussing these issues with the Department of Health and Human Services and have decided to reserve the issue of recommended exclusions in the regulations at this time. However, as provided in section 1129 of the Act, we will notify the Secretary upon a final determination to impose a penalty or assessment with respect to a physician or medical provider.

A CMP may be imposed for misrepresentation of a material fact. Section 1129(a)(2) defines a material fact as one which the Agency may consider in evaluating whether an applicant has initial or continuing entitlement to or eligibility for OASDI or SSI benefit payments.

Section 1129(b) provides that after a violation has occurred, the IG has six years to initiate a proceeding, in accordance with Rule 4 of the Federal Rules of Civil Procedure, to determine whether to impose a CMP or assessment. Department of Justice authorization must be obtained before such a proceeding may be initiated. The IG must give the respondent written notice and an opportunity for the determination to be made on the record after a hearing at which the respondent is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses. Persons who have previously been convicted of a Federal or State crime charging fraud or false statement(s) are estopped from denying the elements of the criminal offense.

The IG will determine the amount or scope of the penalty and assessment after considering, as provided in section 1129(c), the nature of the statements or representations and the circumstances under which they occurred, the degree of culpability, the history of prior offenses, the financial condition of the person who committed the offense, and other matters as justice may require.

These proposed rules would implement the notice requirements of section 1129(b) by providing in § 498.109 that, if the IG proposes to impose a penalty or assessment in accordance with this part, the IG must send written notice to the respondent of the IG's intent to take such action. Under the proposed rules, the notice will describe the statutory basis for the penalty or assessment. The notice will also provide instructions for responding and will explain the respondent's hearing rights. The IG's detailed CMP hearings and appeal procedures will be published in the Federal Register in the near future, and will be located at 20 C.F.R. § 498.200 et seq.

These proposed CMP regulations have been modeled after longstanding regulations in 42 C.F.R. part 1003 which implement similar statutory CMP provisions for false claims in the Medicare and Medicaid programs.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and have determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are not subject to OMB review.

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We have determined that no regulatory impact analysis is required for these proposed regulations. While the penalties and assessments which the IG could impose as a result of section 1129 of the Act and these regulations might have a slight impact on small entities, we do not anticipate that a substantial number of these small entities will be significantly affected by this rulemaking. Based on our determination, the IG certifies that these proposed regulations would not have a significant economic impact on a substantial number of small business entities. Any impact on small businesses would primarily be a result of the legislation rather than these regulations. Therefore, we have not prepared a regulatory flexibility analysis.

Effect of NPRM on Pending Actions

Until the promulgation of final regulations, the IG intends that these proposed regulations shall provide guidance with respect to the imposition and adjudication of the CMPs and assessments.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income Program)

List of Subjects in 20 CFR part 498

Administrative practice and procedure, Fraud, Penalties.

Approved: October 10, 1995.

June Gibbs Brown,

Inspector General.

For the reasons set out in the preamble, part 498 of chapter III of title 20 of the Code of Federal Regulations would be amended as set forth below.

PART 498—CIVIL MONETARY PENALTIES, ASSESSMENTS AND RECOMMENDED EXCLUSIONS

1–2. The authority citation for part 498 is revised to read as follows:

Authority: Secs. 702(a)(5), 1129, and 1140 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8, and 1320b–10).

3. Section 498.100 is amended by revising paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 498.100 Basis and purpose.

(a) *Basis.* This part implements sections 1129 and 1140 of the Social Security Act (42 U.S.C. 1320a–8 and 1320b–10).

(b) *Purpose.* This part provides for the imposition of civil monetary penalties and assessments, as applicable, against persons who—

(1) Make or cause to be made false statements or representations, or omissions of material fact for use in determining any right to or amount of benefits under title II or benefits or

payments under title XVI of the Social Security Act; or

* * * * *

4. Section 498.101 is amended by adding the following definitions and revising the definition of ''Respondent'' to read as follows:

§ 498.101 Definitions.

* * * * *

Assessment means the amount described in § 498.104, and includes the plural of that term.

* * * * *

Material fact means a fact which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under title II or eligible for benefits or payments under title XVI.

* * * * *

Respondent means the person upon whom the Commissioner or the Inspector General has imposed, or intends to impose, a penalty and assessment.

* * * * *

5. Section 498.102 is amended by revising the section heading and adding paragraph (a) to read as follows:

§ 498.102 Basis for civil monetary penalties and assessments.

(a) The Office of the Inspector General may impose a penalty and assessment against any person whom it determines in accordance with this part—

(1) Has made, or caused to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or amount of:

(i) Monthly insurance benefits under title II of the Social Security Act; or

(ii) Benefits or payments under title XVI of the Social Security Act; and

(2)(i) Knew, or should have known, that the statement or representation—

(A) Was false or misleading; or

(B) Omitted a material fact; or

(ii) Made such statement with knowing disregard for the truth.

* * * * *

6. Section 498.103 is amended by adding paragraph (a) to read as follows:

* * * * *

§ 498.103 Amount of penalty.

(a) Under section § 498.102(a), the Office of the Inspector General may impose a penalty of not more than $5,000 for each false statement or representation.

* * * * *

7. Section 498.104 is added to read as follows:

§ 498.104 Amount of assessment.

A person subject to a penalty determined under § 498.102(a) may be subject, in addition, to an assessment of not more than twice the amount of benefits or payments paid as a result of the statement or representation which was the basis for the penalty. An assessment is in lieu of damages sustained by the United States because of such statement or representation.

8. Section 498.106 is amended by adding paragraph (a) to read as follows:

§ 498.106 Determinations regarding the amount or scope of penalties and assessments.

(a) In determining the amount or scope of any penalty and assessment in accordance with § 498.103(a) and § 498.104, the Office of the Inspector General will take into account:

(1) The nature of the statements and representations referred to in § 498.102(a) and the circumstances under which they occurred;

(2) The degree of culpability of the person committing the offense;

(3) The history of prior offenses of the person committing the offense;

(4) The financial condition of the person committing the offense; and

(5) Such other matters as justice may require.

* * * * *

9. Section 498.108 is revised to read as follows:

§ 498.108 Penalty and assessment not exclusive.

Penalties and assessments imposed under this part are in addition to any other penalties prescribed by law.

10. Section 498.109 is revised to read as follows:

§ 498.109 Notice of proposed determination.

(a) If the Office of the Inspector General seeks to impose a penalty and assessment, as applicable, it will serve written notice of the intent to take such action. The notice will include:

(1) Reference to the statutory basis for the penalty and assessment, as applicable;

(2) A description of the false statements, representations, and incidents, as applicable, with respect to which the penalty and assessment, as applicable, are proposed;

(3) The amount of the proposed penalty and assessment, as applicable;

(4) Any circumstances described in § 498.106 that were considered when determining the amount of the proposed penalty and assessment, as applicable; and

(5) Instructions for responding to the notice, including—

(i) A specific statement of respondent's right to a hearing; and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty and assessment, as applicable, without right of appeal.

(b) Any person upon whom the Office of the Inspector General has proposed the imposition of a penalty and assessment, as applicable, may request a hearing on such proposed penalty and assessment.

(c) If the respondent fails to exercise the respondent's right to a hearing, within the time permitted under this section, any penalty and assessment, as applicable, becomes final.

11. Section 498.110 is revised to read as follows:

§ 498.110 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 498.109(a), the Office of the Inspector General may seek the proposed penalty and assessment, as applicable, or any less severe penalty and assessment. The Office of the Inspector General shall notify the respondent by certified mail, return receipt requested, of any penalty and assessment, as applicable, that has been imposed and of the means by which the respondent may satisfy the amount owed.

12. Section 498.114 is added to read as follows:

§ 498.114 Collateral estoppel.

In a proceeding under section 1129 of the Social Security Act that—

(a) Is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal or State crime charging fraud or false statements; and

(b) Involves the same transactions as in the criminal action, the person is estopped from denying the essential elements of the criminal offense.

13. Section 498.127 is revised to read as follows:

§ 498.127 Judicial review.

Sections 1129 and 1140 of the Social Security Act authorize judicial review of any penalty and assessment, as applicable, that has become final. Judicial review may be sought by a respondent only in regard to a penalty and assessment, as applicable, with respect to which the respondent requested a hearing, unless the failure or neglect to urge such objection is excused by the court because of extraordinary circumstances.

14. Section 498.128 is amended by revising paragraph (a) and adding paragraphs (b), (d), and (e) to read as follows:

§ 498.128 Collection of penalty and assessment.

(a) Once a determination has become final, collection of any penalty and assessment will be the responsibility of the Commissioner or his or her designee.

(b) In cases brought under section 1129 of the Social Security Act, a penalty and assessment imposed under this part may be compromised by the Commissioner or his or her designee, and may be recovered in a civil action brought in the United States district court for the district where the statement or representation referred in § 498.102(a) was made, or where the respondent resides.

* * * * *

(d) As specifically provided under the Social Security Act, in cases brought under section 1129 of the Social Security Act, the amount of a penalty and assessment when finally determined, or the amount agreed upon in compromise, may also be deducted from:

(i) Monthly title II or title XVI payments, notwithstanding section 207 of the Social Security Act as made applicable to title XVI by section 1631(d)(1) of the Social Security Act; or

(ii) A tax refund to which a person is entitled to after notice to the Secretary of the Treasury under 31 U.S.C. 3720A; or

(iii) By authorities provided under the Debt Collection Act of 1982, as amended, 31 U.S.C. 3711, to the extent applicable to debts arising under the Act; or

(iv) Any combination of the foregoing.

(e) Matters that were raised or that could have been raised in a hearing before an administrative law judge or in an appeal to the United States Court of Appeals under sections 1129 or 1140 of the Social Security Act may not be raised as a defense in a civil action by the United States to collect a penalty and assessment under this part.

15. Section 498.129 is added to read as follows:

§ 498.129 Notice to other agencies.

As provided in section 1129 of the Social Security Act, when a determination to impose a penalty and assessment with respect to a physician or medical provider becomes final, the Office of the Inspector General will notify the Secretary of the final determination and the reasons therefore.

16. Section 498.132 is revised to read as follows:

§ 498.132 Limitations.

The Office of the Inspector General may initiate a proceeding in accordance with § 498.109(a) to determine whether to impose a penalty and assessment only—

(a) In cases brought under section 1129 of the Social Security Act, after receiving authorization from the Attorney General pursuant to procedures agreed upon by the Inspector General and the Attorney General; and

(b) Within 6 years from the date on which the violation was committed.

[FR Doc. 95–28309 Filed 11–24–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 95N–0342]

Export Requirements for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations for investigational devices to streamline requirements for persons seeking to export unapproved medical devices. The proposed rule would establish that FDA approval of an investigational device exemption application (IDE) constitutes an agency determination that the export of the unapproved device is not contrary to the public health or safety. The proposed rule would also consider a country as approving importation of an unapproved device if the country has notified FDA that it approves of the importation of unapproved devices with an approved IDE into their countries. Thus, for devices with an FDA-approved IDE, the proposal would eliminate the need for FDA to make independent determinations either that exportation is not contrary to the public health or safety or that an importing country approves the importation of a specific device. The proposed rule is intended to codify and to simplify export requirements for certain unapproved devices pursuant to the President's and Vice-President's ''National Performance Review,'' as reflected in the April 1995 report titled, ''Reinventing Drug & Medical Device Regulations.'' The agency is also requesting comments on other ways of improving the export process for medical devices.

DATES: Written comments by February 12, 1996.

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: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 801(e)(1) (21 U.S.C. 381(e)(1)) of the Federal Food, Drug, and Cosmetic Act (the act) states, in part, that a device intended for export shall not be deemed to be adulterated or misbranded if it: (1) meets the specifications of the foreign purchaser; (2) is not in conflict with the laws of the country to which it is intended for export; (3) is labeled on the outside of the shipping package that it is intended for export; and (4) is not sold or offered for sale in domestic commerce. Section 801(e)(1) of the act does not apply, however, to any device that does not comply with an applicable requirement under sections 514 (21 U.S.C. 360d) (performance standards) or 515 (21 U.S.C. 360e) (premarket approval) of the act, a device which, under section 520(g) of the act (21 U.S.C. 360j(g)), is exempt from sections 514 and 515 of the act, or to a banned device, unless, in addition to the requirements in section 801(e)(1), the agency ''has determined that exportation of the device is not contrary to the public health and safety and has the approval of the country to which it is intended for export.'' (See section 801(e)(2) of the act.) This statutory scheme requires parties to submit requests to FDA for exportation of certain unapproved devices and also requires FDA to approve such requests if the requirements in section 801(e) of the act are met.

To enable FDA to determine whether the exportation of a particular device is not contrary to the public health or safety, FDA generally asks that the person seeking to export the device submit, along with the export request, information or data regarding the device's safety. However, if the device is the subject of an IDE approved by FDA and will be marketed or used in clinical trials for the same intended use in the foreign country, FDA does not require submission of safety data with the export request because those safety data are already contained in the IDE.

To determine whether a foreign country has approved importation of a

device, a person who intends to export an unapproved device usually provides FDA a letter from a foreign government official stating that the foreign government does not object to the importation of the device. The letter must identify the device and its intended use and state that the device is not in conflict with the laws of the foreign country (or that there is no objection to importation of the device), that the foreign government has full knowledge of the device's regulatory status in the United States, and that importation is permitted. FDA has recently stated that, for devices with a ''CE'' mark from the European Union, an additional letter from any importing country within the European Economic Area would not be needed.

Each year, FDA receives hundreds of requests for permission to export unapproved devices. In 1992, FDA handled 695 requests, and each request required an average of 91 days to process. In 1993, FDA processed 501 requests, but improved its average processing time to 65 days. In 1994, the agency processed 635 requests, and improved its average processing time significantly further, to 16 days. From January to September, 1995, the agency processed over 570 requests with an average processing time of 10 days.

Yet, even though the average processing time for export requests has significantly improved in recent years, FDA is aware that the domestic industry continues to believe that the agency's export approval obligations may affect a firm's ability to compete in international markets and may represent an unnecessary regulatory barrier. Consequently, in April 1995, FDA, as part of the President's and Vice-President's ''National Performance Review,'' announced that it would propose two new means by which unapproved devices could be exported. First, the agency proposed permitting the export of unapproved devices to certain advanced industrialized countries without prior FDA review and approval, provided that the device complies with the importing country's laws. FDA would seek the necessary legislative changes and would consult Congress on the list of advanced industrialized countries. In August, 1995, the Senate Committee on Labor and Human Resources unanimously reported a bill (S. 593, as amended) that would simplify export requirements for devices. If such legislation is enacted, the agency will amend this rule if necessary.

Second, the National Performance Review report stated that FDA would initiate administrative changes to permit exports to countries that are not on the list of advanced industrialized countries ''if the exporter has an Investigational Device Exemption (IDE) permitting testing on humans in the United States, the importing country has given FDA a letter providing blanket approval for IDE-type devices, and the device is in compliance with the importing country's laws.''

This proposed rule would implement the second half of the Administration's initiative on reinventing device exports and is the part of the initiative that FDA can achieve under current law. The proposal would simplify and streamline the agency's export approval process for certain unapproved devices. The agency requests comments on other ideas for improving the export process for medical devices.

II. Description of the Proposed Rule

Currently, the only FDA regulation on device exports, § 812.18(b), states that, ''A person exporting an investigational device subject to [part 812] shall obtain FDA's prior approval as required by section 801(d) [sic] of the act.'' [1] The proposed rule would amend § 812.18(b) to state that a person that wishes to export an investigational device subject to part 812 must comply with the requirements at section 801(e)(1) of the act, and proposed § 812.18(b)(1) would state that, for purposes of section 801(e)(2) of the act, prior FDA approval is unnecessary if the investigational device to be exported is the subject of an IDE approved by FDA and ''will be marketed or used in clinical trials in the foreign country for the same intended use as that in the approved IDE and is to be exported to a country that has expressed its approval of the importation of investigational devices that are the subject of FDA-approved IDE's.'' However, if the device is the subject of an FDA-approved IDE and has received a ''CE'' mark from the European Union, the device may be exported to any country in the European Economic Area. Proposed § 812.18(b)(1) would also state that the agency would make available a list of countries that have approved the importation of investigational devices that are the subjects of IDE's approved by FDA. The agency expects to maintain this list electronically in the Center for Devices and Radiological Health through the electronic docket administered by the Center's Division of Small Manufacturer's Assistance.

Under § 812.2(b)(1), a nonsignificant risk (NSR) device is considered to have an approved IDE as long as the sponsor complies with the requirements of § 812.2(b)(1)(i) through (vii). Therefore, the streamlined requirements set forth in proposed § 812.18(b)(1) also would apply to NSR devices that comply with § 812.2(b)(1).

Proposed § 812.18(b)(2) would require FDA approval to export an investigational device if FDA withdraws approval of the IDE (under § 812.30(b)) or the sponsor terminates any or all parts of investigations because unanticipated adverse device effects present an unreasonable risk to subjects (under § 812.46(b)). FDA approval to export an investigational device in these situations is required under section 801(e)(2) of the act.

III. Legal Authority

As noted earlier, section 801(e)(2) of the act prohibits the export of certain unapproved devices and banned medical devices unless FDA determines that exportation of the device: (1) Is not contrary to the public health or safety; and (2) has the approval of the country to which it is intended for export. This section was added to the act as part of the Medical Device Amendments of 1976 (Pub. L. 94–295) and the legislative history for the Medical Device Amendments indicates that Congress considered two distinct export provisions. One provision suggested by the House of Representatives would have permitted export of an unapproved device to any foreign country that had an ''appropriate'' health agency where such agency had reviewed and approved the device. FDA would receive notice of the export, but would not be required to approve exportation. In contrast, the Senate provision would have authorized export of unapproved devices if FDA determined that exportation ''was in the interest of public health and safety'' and the device had the approval of the country to which it was being exported. Thus, unlike the House provision, the Senate provision would have required the agency to make certain determinations before the device could be exported. Congress ultimately enacted a provision that was very similar to the Senate version.

The proposed rule is consistent with the legislative history and section 801(e)(2) of the act. FDA would still determine whether exportation of the device was contrary to the public health

[1] When FDA originally issued 21 CFR § 812.18(b), the export authority for devices was at section 801(d) of the act. However, Congress renumbered the export provision as section 801(e) of the act when it added a new section 801(d) as part of the Prescription Drug Marketing Act of 1987. Thus, § 812.18(b) contains an obsolete reference to section 801(d) of the act, and the proposed rule would correct this error.

or safety and whether the foreign country receiving the device approves of the device's importation. The principal difference between the current device export approval process and the proposed rule is that, under the proposed rule, FDA would consider the existence of an FDA-approved IDE to be FDA's determination that exportation of the device is not contrary to the public health or safety. Additionally, the list of countries that FDA would maintain would represent the agency's determination that, for those countries on the list, the country approves of the importation of investigational devices. By making these determinations in advance, through the IDE process and the list of countries, no separate export approval would be required, and so the device export process would be much simplified and streamlined.

Courts have routinely upheld similar ''blanket'' determinations or findings made by administrative agencies. For example, in *Weinberger* v. *Hynson, Westcott and Dunning, Inc*., 412 U.S. 609 (1973), the Supreme Court examined, among other things, whether FDA was required to conduct individual hearings for each manufacturer of similar drug products before it could withdraw those drug products from the market. The Court declined to require individual hearings because ''many hearings would be an exercise in futility'' and ''To require separate judicial proceedings to be brought against each * * * would be to create delay where in the interest of public health there should be prompt action.'' (Id. at pp. 621, 624–625.)

Similarly, in *In re Permian Basin Area Rate Cases*, 390 U.S. 747 (1968), the Supreme Court declined to require an agency to engage in individual proceedings, upholding the agency's ability to use a comprehensive and practical regulatory approach. The Court recognized that, ''[C]onsiderations of flexibility and practicality are certainly germane to the issues before us * * * We cannot, in these circumstances, conclude that Congress has given authority inadequate to achieve with reasonable effectiveness the purpose for which it acted.'' (Id. at p. 777 (citations omitted).) (See also *Phillips Petroleum Company* v. *U.S. Environmental Protection Agency*, 803 F.2d 545, 562 (10th Cir. 1986) (The Environmental Protection Agency was ''well within its discretion to use a generic streamlined approach or procedure'' instead of case-by-case determinations as to the necessity of a mechanical integrity test).)

This proposed rule is consistent with these court decisions because FDA is making its determination that an approved IDE provides a satisfactory basis for its required determination that exportation of a device is not contrary to public health or safety. The agency is making this determination through this rulemaking, providing an opportunity for comment to all interested persons. Assuming that the agency issues a final rule, there will be no need for the agency to make case-by-case determinations that such devices do not present a public health or safety concern. Similarly, the need to make an individual determination that a foreign country has approved the device's importation is eliminated where such country has already indicated that it will permit the importation of all FDA-approved IDE devices. Requiring the submission and FDA review of the same information that the agency already has, in these cases, would unnecessarily consume agency and industry resources and delay exportation.

The proposed rule, therefore, is authorized by sections 520(g) and 801(e)(2) of the act and the general rulemaking authority under section 701(a) of the act and is consistent with judicial decisions upholding an agency's authority to develop streamlined, efficient procedures to make determinations applicable to a group or class of persons or products, rather than proceeding on a case-by-case basis.

IV. 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. This proposed rule meets the definition of a significant regulatory action in the Executive Order in that it raises novel legal and policy issues arising from Presidential priorities, and so has been reviewed by OMB 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 the proposed rule, if finalized, would simplify and lessen regulatory burdens on persons seeking to export unapproved devices that are the subjects of approved IDE's and that are to be exported to a country that has given a blanket approval to importation of devices that are the subjects of FDA-approved IDE's, the agency certifies that the proposed rule would not impose any additional regulatory burdens on small entities, and so, under the Regulatory Flexibility Act, no further analysis is required.

V. Environmental Impact

The agency has determined, under 21 CFR § 25.24(a)(8), 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.

Interested persons may, on or before February 12, 1996, 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. Paperwork Reduction Act of 1995

This proposed rule would simplify and streamline the device export process, and does not impose any new information collection requirements. The existing information collection requirements in 21 CFR part 812 have been approved under OMB control no. 0910–0078 which expires on May 31, 1996.

List of Subjects

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that Title 21 of the Code of Federal Regulations be amended as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation for part 812 is revised to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 702, 704, 721, 801, 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 393); secs. 215, 301, 351, 352, 353–360F of the Public

Health Service Act (42 U.S.C. 216, 241, 262, 263, 263a–263n).

2. Section 812.18 is amended by revising paragraph (b) to read as follows:

§ 812.18 Import and export requirements.

* * * * *

(b) *Exports.* A person exporting an investigational device subject to this part shall comply with section 801(e)(1) of the act, and shall obtain FDA's prior approval, as required by section 801(e)(2) of the act. However, if the investigational device to be exported is the subject of an investigational device exemption application (IDE) approved by FDA:

(1) No prior approval shall be necessary provided that the investigational device to be exported will be marketed or used in clinical trials in the foreign country for the same intended use as that in the approved IDE and is to be exported to a country that has expressed its approval of the importation of investigational devices that are the subjects of FDA-approved IDE's. (For devices that have received a ''CE'' mark from the European Union, the valid granting of a CE mark for a device that is the subject of an FDA-approved IDE shall constitute approval of the device for importation into any country in the European Economic Area.) A list of countries that have approved the importation of investigational devices that are the subjects of IDE's approved by FDA is available from the Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(2) If FDA withdraws approval of the IDE or the sponsor terminates any or all parts of investigations because unanticipated adverse device effects present an unreasonable risk to subjects, exportation of the investigational device may continue only with FDA approval in accordance with section 801(e)(2) of the act.

Dated: November 13, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–28894 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

27 CFR Parts 5, 19, 24, 25, 70, and 250

[Notice No. 816]

RIN 1512–AB40

Registration of Formulas and Statements of Process for Certain Domestically Produced Wines, Distilled Spirits and Beer (95R–019P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to require the registration, rather than approval, of formulas and statements of process for certain domestically produced wines, distilled spirits, and beer. ATF believes that the proposed regulations will provide greater flexibility to the industry by enabling proprietors to commence production in a more expeditious manner.

The proposed amendments are part of the Administration's Reinventing Government effort to reduce burden and streamline requirements.

DATES: Written comments must be received on or before January 26, 1996.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; ATTN: Notice No. 816.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

Under the current regulations, approved formulas or statements of process are required for certain domestically produced distilled spirits, wines, and beer. Pursuant to regulations in 27 CFR Part 5, an approved formula on ATF Form 5110.38 (Formula For Distilled Spirits Under The Federal Alcohol Administration Act) is required to blend, mix, purify, refine, compound, or treat distilled spirits in a manner which results in a change of character, composition, class or type of the spirits. The formula requirement applies to: (1) Proprietors of distilled spirits plants qualified as processors under 27 CFR Part 19; (2) Persons in Puerto Rico who manufacture distilled spirits products for shipment to the United States in accordance with 27 CFR Part 250; and (3) Persons who ship Virgin Islands distilled spirits products into the United States in accordance with 27 CFR Part 250.

As it relates to wine, the regulations in 27 CFR Part 24 provide that a proprietor must, before commencing production, obtain approval of the formula and process by which special natural wine, agricultural wine, and certain other than standard wines (e.g., Spanish type blending sherry) are to be made. An approved formula is also required under certain conditions in the production of an effervescent (sparkling) wine. Wine formulas are filed on ATF Form 5120.29, Formula And Process For Wine.

With regard to beer, the regulations in 27 CFR Part 25 require that a brewer file a statement of process for any fermented beverage which the proprietor intends to produce and market under a name other than ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor.'' The statement of process, which is contained in the Brewer's Notice, ATF Form 5130.10, includes the name or designation of the product, the kinds and quantities of materials to be used, the method of manufacture, and the approximate alcohol content of the finished product.

ATF reviews approximately 1,700 formulas and statements of process annually. The Bureau examines the formulas and statements of process to ensure that, among other things, the ingredients used are not only approved by the Food and Drug Administration (FDA), but are used within prescribed limitations established by the FDA. The average turnaround time for processing a formula or statement of process is approximately 3 weeks.

The majority of formulas and statements of process that ATF examines are approved without any substantive changes. The Bureau attributes this, in part, to its continued efforts at providing guidance and information to members of the alcoholic beverage industry. Through the publication of industry circulars and other publications, such as the ''Compliance Matters'' bulletin, ATF is able to apprise the industry of policies or procedures which might affect them. With regard to formulas for wine and distilled spirits, specifically, the Bureau recommends that proprietors review Industry Circular 89–3. This circular clarifies and provides information and guidelines for the completion and submission of formulas. This circular can also be utilized by brewers in the

preparation of statements of process for flavored malt beverage products.

Proposed Registration of Formulas and Statements of Process

ATF is proposing to amend the regulations to provide for the registration, rather than approval, of formulas and statements of process. ATF believes that a registration system will provide greater flexibility to the industry by enabling proprietors to commence production in a more expeditious manner. As indicated, ATF's current average turnaround time for processing a formula or statement of process is 3 weeks. Under a registration system, the turnaround time would be less than 1 week. The proposed amendments are part of the Administration's Reinventing Government effort to reduce burden and streamline requirements.

Registration merely indicates that a formula or statement of process is on file with ATF. For formulas and statements of process registered on or after the effective date of the final rule, registration does not mean that ATF has determined that the formula or statement of process complies with the laws and regulations enforced by ATF.

If the proposed regulations are adopted, the forms which are currently used by proprietors for filing distilled spirits and wine formulas (ATF F 5110.38 and ATF F 5120.29, respectively) will be revised accordingly. No additional information will be required on the revised forms. With regard to distilled spirits and wine, the procedures for filing the revised forms will be the same as is currently required. For beer products, the statement of process will no longer be included as part of the Brewer's Notice, Form 5130.10. Rather, brewers will prepare the statement of process on letterhead stationery, in triplicate. The statement will be filed with the Chief, Product Compliance Branch.

Once received, ATF will register the formula or statement of process and include the date of registration. The registered formula or statement of process will then be forwarded to the proprietor. Production may commence upon the receipt by the proprietor of a registered formula or statement of process.

With the exception of special natural wines, ATF will register all formulas for distilled spirits and wine as well as statements of process for beer. In the case of special natural wine, section 5386 of the Internal Revenue Code of 1986, 26 U.S.C. 5386, requires that such wine be made pursuant to an approved formula. Therefore, ATF will continue to approve formulas for special natural wine filed on ATF Form 5120.29.

Each applicant submitting a formula or statement of process for registration should ensure that such formula or statement of process is properly completed. In addition to following the guidelines presented in Industry Circular 89–3, the instructions on the reverse side of the forms should be followed carefully. ATF will continue to provide guidance to proprietors, as needed, through the publication of its ''Compliance Matters'' bulletin and through other methods.

Previously approved formulas and statements of process will not have to be submitted to ATF for registration. These will continue to be valid and, except for special natural wines, will automatically be deemed and included as registered formulas and statements of process for all purposes. When a change is made in the registered formula or statement of process (including those previously approved), the new formula or statement of process must be registered. When a change is made in an approved special natural wine formula, the new formula must be approved.

Cancellation of Registered Formulas and Statements of Process

The proposed regulations also set forth the procedures for the cancellation of registered formulas and statements of process (including those previously approved). These procedures will appear in 27 CFR Part 70, Procedure and Administration. The establishment of these procedures in the regulations will ensure that all industry members are aware of this practice and will afford due process of a notice and opportunity to present their position before their registered formula or statement of process is cancelled. The proposed cancellation procedures do not apply to approved formulas for special natural wines. ATF is considering whether these procedures should apply to such approved formulas and is interested in comments on this question.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The proposed rule is liberalizing in nature in that domestic proprietors will be able to commence production in a more timely manner for those wines, distilled spirits, and beers which require a registered formula or statement of process. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been previously reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under the following control numbers: 1512–0045, 1512–0058, 1512–0059, 1512–0192, 1512–0198, 1512–0203, 1512–0204, 1512–0205, 1512–0206, 1512–0207, 1512–0216, 1512–0250, 1512–0298, 1512–0352, 1512–0461, 1512–0462, 1512–0503. These control numbers were in effect on October 1, 1995, the effective date of the Paperwork Reduction Act of 1995. Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 60-day comment period. The

Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information:

The author of this document is James P. Ficaretta, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

Part 19 q02

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, U.S. possessions, Warehouses, and Wine.

Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, and Wine.

Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic funds transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, and Transportation.

Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Appeals, Authority delegations, Cancellations, Claims, Government employees, Informal conferences, Law enforcement, and Law enforcement officers.

Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Customs duties and inspection, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, and Wine.

Authority and Issuance

27 CFR Parts 5, 19, 24, 25, 70, and 250 are amended as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 1. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 2. Section 5.11 is amended by adding a definition for ''registered formula'' to read as follows:

§ 5.11 Meaning of terms.

* * * * *

Registered formula. A distilled spirits formula which has been filed with the Director and bears the signature of the Director or the Director's delegate.

* * * * *

Par. 3. Section 5.26 is revised to read as follows:

§ 5.26 Formula requirements.

(a) *General.* A registered formula is required to blend, mix, purify, refine, compound, or treat spirits in a manner which results in a change of character, composition, class or type of the spirits. Form 5110.38 (formerly 27–B Supplemental) shall be filed with the Director in accordance with the instructions on the form and shall designate all ingredients and, if required, the process used. Any approved formula on Form 27–B Supplemental and any approved or registered formula on Form 5110.38 shall remain in effect until canceled, superseded, or voluntarily surrendered. Any existing qualifying statements as to the rate of tax or the limited use of drawback flavors appearing on a Form 27–B Supplemental are obsolete.

(b) *Registration of formulas approved before (effective date of final rule).* Any formula on Form 27–B Supplemental or Form 5110.38 that was approved before (effective date of final rule) is included as a registered formula, as required by paragraph (a) of this section, without any resubmission by the holder of the approved formula or notification by ATF.

(c) *Change in formula.* Any change in a registered formula shall require the filing of a new Form 5110.38. After a change in a formula has been registered, the original formula shall be surrendered to the Director.

(d) *Cancellation of registered formula.* The procedures for the cancellation of a registered formula are prescribed in 27 CFR Part 70, Subpart E.

Par. 4. Section 5.28 is revised to read as follows:

§ 5.28 Adoption of predecessor's formulas.

The adoption by a successor of registered Forms 5110.38 shall be in the form of an application filed with the Director. The application shall clearly show that the predecessor has authorized the use of its previously approved or registered formulas by the successor. The application shall list the formulas for adoption by:

(a) Formula number,

(b) Name of product, and

(c) Date of registration (or original date of approved formula, if any).

PART 19—DISTILLED SPIRITS PLANTS

Par. 5. The authority citation for 27 CFR Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 6. Section 19.11 is amended by adding a definition for ''registered formula'' to read as follows:

§ 19.11 Meaning of terms.

* * * * *

Registered formula. A distilled spirits formula which has been filed with the Director and bears the signature of the Director or the Director's delegate.

* * * * *

Par. 7. Section 19.187(a) is revised to read as follows:

§ 19.187 Adoption of formulas.

(a) *Forms 5110.38.* The adoption by a successor of registered Forms 5110.38 shall be in the form of an application, filed with the Director. The application shall list the formulas for adoption by formula number, name of product, and date of registration (or original date of

the approved formula, if any). The application shall clearly show that the predecessor has authorized the use of its previously registered formulas by the successor.

* * * * *

Par. 8. Section 19.324(b), under the undesignated center heading ''FORMULA'', is revised to read as follows:

Formula

§ 19.324 Statement of production procedure or Form 5110.38.

* * * * *

(b) As provided in 27 CFR 5.27, a registered formula on Form 5110.38 is required for the redistillation of spirits in the production account. Any formula on Form 5110.38 that was approved before (effective date of final rule) is included as a registered formula, as required by this paragraph, without any resubmission by the holder of the approved formula or notification by ATF. The procedures for the cancellation of a registered formula are prescribed in 27 CFR Part 70, Subpart E.

* * * * *

Par. 9. Section 19.331 is revised to read as follows:

§ 19.331 General.

Distillers or processors may redistill spirits, denatured spirits, articles, and spirits residues. Certain products may only be redistilled pursuant to a registered formula on Form 5110.38, as specified in 27 CFR 5.27. Any formula on Form 5110.38 that was approved before (effective date of final rule) is included as a registered formula, as required by this paragraph, without any resubmission by the holder of the approved formula or notification by ATF. The procedures for the cancellation of a registered formula are prescribed in 27 CFR Part 70, Subpart E.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1365, as amended (26 U.S.C. 5223))

Par. 10. Section 19.378, under the undesignated center heading ''FORMULAS'', is revised to read as follows:

Formulas

§ 19.378 Formula requirements.

A registered formula on ATF Form 5110.38 must be secured for spirits for domestic use or export as provided in 27 CFR 5.26–5.27 before processors may blend, mix, purify, refine, compound or treat spirits in any manner which results in a change of character, composition, class or type of the spirits including redistillation as provided in § 19.331, and the production of gin or vodka by other than original and continuous distillation. Any formula on ATF Form 5110.38 that was approved before (effective date of final rule) is included as a registered formula, as required by this paragraph, without any resubmission by the holder of the approved formula or notification by ATF. The procedures for the cancellation of a registered formula are prescribed in 27 CFR part 70, Subpart E.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, 1395, as amended (26 U.S.C. 5201, 5555))

Par. 11. Section 19.596(b)(6) is amended by removing the words ''an approved'' and adding the words ''a registered'' in their place.

Par. 12. Section 19.723(c)(2) is amended by removing the word ''approved'' and adding in its place the word ''registered'' in the first sentence.

Par. 13. Section 19.778(b) is amended by removing the word ''approved'' and adding in its place the word ''registered''.

PART 24—WINE

Par. 14. The authority citation for 27 CFR Part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 15. Section 24.10 is amended by adding the words ''or registered'' after the word ''approved'' in the definition for ''formula wine'' and by adding a definition for ''registered formula'' to read as follows:

§ 24.10 Meaning of terms.

* * * * *

Registered formula. A wine formula which has been filed with the Director and bears the signature of the Director or the Director's delegate.

* * * * *

Par. 16. Sections 24.80, 24.81, and 24.82, under the designated heading ''FORMULAS'', are revised and new section 24.83 is added to read as follows:

Formulas

§ 24.80 General.

The proprietor shall, before production, register the formula and process by which agricultural wine and other than standard wine (except distilling material or vinegar stock) are to be made. Any formula for an agricultural wine and other than standard wine that was approved before (effective date of final rule) is included as a registered formula, as required by this section, without any resubmission by the holder of the approved formula or notification by ATF. For special natural wine, the proprietor shall, before production, obtain approval of the formula and process by which such wine is to be made. The formula shall be prepared and filed with the Director on ATF F 5120.29, Formula and Process for Wine, in accordance with the instructions on the form. A nonbeverage wine formula shall show the intended use of the finished wine or wine product. Any formula registered or approved under this section shall remain in effect until revoked, cancelled, superseded, or voluntarily surrendered. Except for research, development, and testing, no special natural wine, agricultural wine or, if required to be covered by a registered formula, other than standard wine may be produced prior to approval or registration by the Director of a formula covering each ingredient and process (if the process requires approval or registration) used in the production of the product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended, 1381, as amended, 1386, as amended, 1395, as amended (26 U.S.C. 5361, 5367, 5386, 5387, 5555))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.81 Filing of formulas.

The proprietor shall designate on each formula filed all ingredients and, if required, describe each process used to produce the wine. The addition or elimination of ingredients, changes in quantities used, and changes in the process of production or any other change in an approved or registered formula shall require the filing of a new ATF F 5120.29. After a change in formula is approved or registered, the original formula shall be surrendered to the Director. The proprietor shall serially number each formula, commencing with ''1'' and continuing thereafter in numerical sequence. Nonbeverage wine formulas shall be prefixed with the symbol ''NB.'' The Director or the regional director (compliance) may at any time require the proprietor to file a statement of process in addition to that required by the ATF F 5120.29 or any other data to determine whether the formula should be approved, registered, revoked, or cancelled.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended, 1395, as amended (26 U.S.C. 5367, 5555))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.82 Samples.

The Director or the regional director (compliance) may, at any time, require the proprietor to submit samples of any wine or wine product made in accordance with an approved or registered formula or of any materials used in production.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5351, 5361, 5362))

(Approved by the Office of Management and Budget under control number 1512–0059)

§ 24.83 Cancellation of registered formulas.

The procedures for the cancellation of a registered formula are prescribed in 27 CFR part 70, subpart E.

Par. 17. Section 24.127 is revised to read as follows:

§ 24.127 Adoption of formulas.

The adoption of approved or registered formulas by a successor proprietor shall be in the form of an application, filed with the Director. The application shall list the formulas for adoption by formula number, name of product, and date of approval or registration (or original date of the approved formula for an agricultural wine or other than standard wine, if any). The application shall clearly show that the outgoing proprietor has authorized the successor proprietor's use of the approved or registered formulas.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1379, as amended (26 U.S.C. 5356))

(Approved by the Office of Management and Budget under control number 1512–0058)

Par. 18. Section 24.192 is amended by removing the word ''approval'' in the third sentence and by adding in its place the word ''registration''.

Par. 19. Section 24.201 is revised to read as follows:

§ 24.201 Formula required.

Before producing any agricultural wine, the proprietor shall register with the Director the formula and process by which it is to be made pursuant to the provisions of § 24.80. Any change in a formula shall be registered in advance as provided by § 24.81. The procedures for the cancellation of a registered formula are prescribed in 27 CFR part 70, subpart E.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1386, as amended (26 U.S.C. 5387))

(Approved by the Office of Management and Budget under control number 1512–0059)

Par. 20. Section 24.211 is revised to read as follows:

§ 24.211 Formula required.

A proprietor who desires to produce other than standard wine shall first register the formula by which it is to be made, except that no formula is required for distilling material or vinegar stock. The formula shall be filed with the Director as provided by § 24.80. Any change in the formula shall be registered in advance as provided by § 24.81. The procedures for the cancellation of a registered formula are prescribed in 27 CFR part 70, subpart E.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1387, as amended (26 U.S.C. 5388))

(Approved by the Office of Management and Budget under control number 1512–0059)

Par. 21. Section 24.214 is amended by removing the words ''an approved'' in the fourth sentence and by adding in its place the words ''a registered''.

Par. 22. Section 24.303(b) is amended by adding the words ''or registered'' after the word ''approved''.

PART 25—BEER

Par. 23. The authority citation for 27 CFR part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Par. 24. Section 25.11 is amended by adding definitions for ''Chief, Product Compliance Branch'' and ''registered statement of process'' to read as follows:

§ 25.11 Meaning of terms.

* * * * *

Chief, Product Compliance Branch. The ATF official responsible for registering statements of process under this part.

* * * * *

Registered statement of process. A statement of process under § 25.67 which has been filed with ATF and bears the signature of the Chief, Product Compliance Branch or his or her delegate.

* * * * *

Par. 25. Section 25.62 is amended by removing paragraph (a)(7) and by redesignating paragraphs (a)(8) through (a)(12) as paragraphs (a)(7) through (a)(11).

Par. 26. Section 25.67 is amended by revising paragraphs (a) and (c), and by adding new paragraph (d) to read as follows:

§ 25.67 Statement of process.

(a) A statement of process shall be prepared on letterhead stationery, in triplicate, and filed and registered with the Chief, Product Compliance Branch for any fermented beverage which the brewer intends to produce and market under a name other than ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor.'' Each statement of process shall include a serial number and shall identify each of the brewer's breweries for which it is filed. The brewer may not commence production of such beverages until the statement of process has been registered. Any statement of process that was approved before (effective date of final rule) is included as a registered statement of process, as required by this paragraph, without any resubmission by the holder of the approved statement of process or notification by ATF.

* * * * *

(c) The base product for any fermented beverage (other than sake or cereal beverage) requiring a statement of process shall have the characteristics of beer as defined in § 25.11.

(d) The procedures for the cancellation of a registered statement of process are prescribed in 27 CFR part 70, Subpart E.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1388, as amended (26 U.S.C. 5052, 5401))

Par. 27. Section 25.71(b)(2) is revised to read as follows:

Changes After Original Qualification

§ 25.71 Amended or superseding notices.

* * * * *

(b) * * *

(2) If the information required by § 25.62(a)(4), (5), (6), (8), and (9) is on file as part of an approved Form 5130.10 and is current, the brewer may incorporate by reference those documents as part of any superseding notice.

* * * * *

Par. 28. Section 25.76 is revised to read as follows:

§ 25.76 Change in statement of process.

When there is a change in the information in a statement of process required by § 25.67 for any fermented beverage produced and marketed under a name other than ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor,'' the brewer shall file and register an amended statement of process with the Chief, Product Compliance Branch prior to using such changed statement.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1388, as amended (26 U.S.C. 5401))

PART 70—PROCEDURE AND ADMINISTRATION

Par. 29. The authority citation for 27 CFR Part 70 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Par. 30. Section 70.11 is amended by adding definitions for ''Chief, Alcohol and Tobacco Programs Division'', ''Chief, Product Compliance Branch'', ''registered formula'', and ''registered statement of process'' to read as follows:

§ 70.11 Meaning of terms.

* * * * *

Chief, Alcohol and Tobacco Programs Division. The Bureau official responsible for deciding appeals of cancellations of registered formulas and registered statements of process under this part.

Chief, Product Compliance Branch. The Bureau official responsible for issuing cancellations of registered formulas and registered statements of process under this part.

* * * * *

Registered formula. A distilled spirits or wine formula which has been filed with the Bureau and bears the signature of the Director or the Director's delegate.

Registered statement of process. A statement of process under 27 CFR 25.67 which has been filed with the Bureau and bears the signature of the Chief, Product Compliance Branch or his or her delegate.

* * * * *

Par. 31. Sections 70.421 through 70.428, under the new undesignated center heading ''CANCELLATION OF REGISTERED FORMULAS OR STATEMENTS OF PROCESS FOR DISTILLED SPIRITS, WINES AND BEER'', are added to Subpart E to read as follows:

Cancellation of Registered Formulas or Statements of Process for Distilled Spirits, Wines and Beer

§ 70.421 Cancellation of registration.

(a) *Cancellation of registered formulas or statements of process.* Formulas registered on ATF Form 5110.38 or ATF Form 5120.29 and registered statements of process, may be cancelled by the Chief, Product Compliance Branch, upon a finding that the formula or statement of process is not in compliance with the applicable laws or regulations.

(b) *Notice of proposed cancellation.* Except as provided in section 70.422(a), when the Chief, Product Compliance Branch, determines that a formula or statement of process which has been registered is not in compliance with the laws or regulations, he or she shall issue to the holder of the formula or statement of process a notice of proposed cancellation which shall set forth the basis for the proposed cancellation. The notice of proposed cancellation will advise the holder of the formula or statement of process that he or she has 45 days from the date of the notice in which to present written arguments or evidence as to why the cancellation should not occur. If the holder of the formula or statement of process does not respond to the notice of proposed cancellation within 45 days of such notice, the holder will be deemed to concur with the finding of non-compliance, and the formula or statement of process will be cancelled. In either case, the right of appeal afforded in paragraph (d) of this section applies.

(c) *Decision after notice of proposed cancellation.* After considering any written arguments or evidence presented by the holder of the registered formula or statement of process, the Chief, Product Compliance Branch, shall issue a decision. If the decision is to cancel the registered formula or statement of process, a letter shall be issued explaining the basis for the cancellation and the specific laws or regulations relied upon in determining that the registered formula or statement of process was not in conformance with law or regulations. If the decision is to withdraw the proposed cancellation, a letter to that effect shall be issued.

(d) *Appeal of cancellation.* A holder of a registered formula or statement of process who wishes to appeal the decision of the Chief, Product Compliance Branch, may file a written appeal with the Chief, Alcohol and Tobacco Programs Division. The written appeal should set forth in detail the reasons he or she believes the decision of the Chief, Product Compliance Branch, was in error. Such appeal must be filed with the Chief, Alcohol and Tobacco Programs Division, within 45 days after the date of the decision of the Chief, Product Compliance Branch.

(e) *Final decision after appeal.* After considering any written arguments or evidence presented by the holder of the registered formula or statement of process the Chief, Alcohol and Tobacco Programs Division, shall issue a written decision to the holder of the registered formula or statement of process. If the decision is to cancel the registered formula or statement of process, a letter shall be issued explaining the basis for the cancellation and the specific laws or regulations relied upon in determining that the registered formula or statement of process was not in conformance with law or regulations. If the decision is to withdraw the proposed cancellation, a letter to that effect shall be sent to the holder of the registered formula or statement of process. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

§ 70.422 Cancellation of registration by operation of law or regulation.

(a) *Cancellation by operation of law or regulation.* The Bureau will not individually notify all holders of registered formulas or statements of process that such registrations have been canceled in situations where such cancellation occurs by operation of law or regulation. Where changes in requirements are made as a result of amendments or revisions to the law or regulations, it is the responsibility of the holder of the registered formula or statement of process to surrender voluntarily all registered formulas or statements of process which are no longer in compliance and to submit new formulas and statements of process that are in compliance with the new requirements; *Provided,* that in certain circumstances, the Bureau may announce that the submission of new formulas or statements of process for registration is not necessary in order to implement a new requirement in the law or regulations. In such circumstances, it is the responsibility of the holder of the registered formula or statement of process to ensure that formulas and statements of process are in compliance with the requirements of the new regulations or law, notwithstanding the fact that registration of new formulas or statements of process was not required.

(b) *Notice of cancellation.* If the Bureau determines that a holder of a registered formula or statement of process is using such registered formula or statement of process when it is no longer in compliance due to amendments or revisions in the law or regulations, the Chief, Product Compliance Branch, will notify the holder of the registered formula or statement of process in writing that the

subject formula or statement of process has been canceled by operation of law or regulations, with a brief description of the grounds for such cancellation.

(c) *Appeal of notice of cancellation.* Within 45 days after the date of a notice of cancellation by operation of law or regulations, the holder of a registered formula or statement of process may file a written appeal with the Chief, Alcohol and Tobacco Programs Division. The appeal should set forth the reasons why the holder of the registered formula or statement of process believes that the regulation or law at issue does not require the cancellation of the registered formula or statement of process.

(d) *Decision after appeal.* After considering all written arguments and evidence submitted by the holder of the registered formula or statement of process, the Chief, Alcohol and Tobacco Programs Division, shall issue a decision regarding the cancellation by operation of law or regulation of the registered formula or statement of process. If the decision is that the law or regulation at issue requires the cancellation of the registered formula or statement of process, a letter shall be issued explaining the basis for the cancellation and citing the specific laws or regulations which required the cancellation of the registered formula or statement of process. If the decision is that the law or regulation at issue does not require the cancellation of such registered formula or statement of process, a letter to that effect shall be sent to the holder of the registered formula or statement of process. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

§ 70.423 Informal conferences.

(a) *General.* As part of a timely filed written appeal of a notice of proposed cancellation, notice of cancellation by operation of law or regulations, or a decision of the Chief, Product Compliance Branch, to cancel a registered formula or statement of process, a holder of a registered formula or statement of process may file a written request for an informal conference with the Chief, Alcohol and Tobacco Programs Division. The decision whether to hold an informal conference is at the sole discretion of the Chief, Alcohol and Tobacco Programs Division.

(b) *Informal conference procedures.* If the Chief, Alcohol and Tobacco Programs Division determines that the holding of an informal conference would be beneficial, he or she shall inform the holder of the registered formula or statement of process and a date shall be agreed upon. The informal conference is for purposes of discussion only and no transcript shall be made. If the holder of the registered formula or statement of process wishes to rely upon arguments, facts, or evidence presented at the informal conference, he or she has 10 days after the date of the conference to incorporate such arguments, facts, or evidence in a written submission to the Chief, Alcohol and Tobacco Programs Division.

§ 70.424 Effective dates of cancellations.

With the exception of cancellations occurring pursuant to section 70.422(a), the Bureau shall allow at least 45 days between the issuance of a decision to cancel a registered formula or statement of process and the actual cancellation of the registered formula or statement of process. The deciding official may, at his or her discretion, allow the holder of the registered formula or statement of process a longer period of time in which to use the registered formula or statement of process. The decision to allow such a ''use-up'' period and the length of the ''use-up'' period allowed are matters committed entirely to the discretion of the deciding official, based on the circumstances of the case.

§ 70.425 Effect of cancellations.

(a) *General.* On the effective date of a final decision which has been issued by the Chief, Product Compliance Branch, or the Chief, Alcohol and Tobacco Programs Division, to cancel a registered formula or statement of process, the holder of the registered formula or statement of process shall be asked to surrender the original of such registered formula or statement of process to the Bureau for manual cancellation. Whether or not the original registered formula or statement of process has been manually cancelled, the formula or statement of process shall be null and void after the effective date of the cancellation of the registered formula or statement of process. It shall be a violation of this section for any holder of a registered formula or statement of process to present a registered formula or statement of process to an official of the United States Government as a valid registered formula or statement of process if the holder of the registered formula or statement of process has been previously notified that such registered formula or statement of process has been cancelled by the Bureau or the formula or statement of process was cancelled by operation of law or regulation.

(b) *Use of registered formula or statement of process during period of appeal.* If a holder of a registered formula or statement of process files a timely appeal after receipt of a notice of cancellation from the Chief, Product Compliance Branch pursuant to section 70.421(c), he or she may continue to use the registered formula or statement of process at issue until the effective date of a final decision issued by the Chief, Alcohol and Tobacco Programs Division. However, the effective date of a notice of cancellation by operation of law or regulations, issued pursuant to section 70.422(b), is not stayed during the pendency of an appeal.

§ 70.426 Service on holder of registered formula or statement of process.

Notices of proposed cancellation and notices of cancellation shall be served on a holder of a registered formula or statement of process by first class mail or by personal delivery. When service is by mail, a signed duplicate original copy of the document shall be mailed to the holder of the registered formula or statement of process at the address stated on the registered formula or statement of process or at the last known address. If authorized by the holder of the registered formula or statement of process, the signed duplicate original copy of the document may be mailed to a designated representative. Where service is by personal delivery, a signed duplicate original copy of the document shall be delivered to the holder of the registered formula or statement of process or to a designated representative or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent thereof or to its attorney of record.

§ 70.427 Representation before the Bureau.

A holder of a registered formula or statement of process may be represented by an attorney, certified public accountant, or other person recognized to practice before the Bureau as provided in 31 CFR Part 8 (Practice Before the Bureau of Alcohol, Tobacco and Firearms) if he or she has otherwise complied with the applicable requirements of 26 CFR 601.521 through 601.527 (conference and practice requirements for alcohol, tobacco, and firearms activities).

§ 70.428 Computation of time.

(a) *Computation.* In computing any period of time prescribed or allowed by sections 70.421 through 70.425, the day of the act, event or default after which the designated period of time is to run is not to be included. The last day of the period to be computed is to be included, unless it is a Saturday, Sunday, or legal

holiday, in which event the period runs until the next day which is neither a Saturday, Sunday, or legal holiday. Papers or documents which are required or permitted to be filed under the aforementioned sections of regulations must be received for filing at the appropriate office within the time limits, if any, for such filing.

(b) *Extensions.* For good cause shown, the Chief, Product Compliance Branch, or the Chief, Alcohol and Tobacco Programs Division, may grant extensions as to any time limits prescribed in sections 70.421 through 70.425.

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 32. The authority citation for 27 CFR Part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 33. Section 250.50 is amended by revising paragraph (b) and by adding new paragraph (c) to read as follows:

§ 250.50 Formula for liquors.

* * * * *

(b) *Wine.* Persons in Puerto Rico who ship wine to the United States shall comply with the formula requirements of 27 CFR Part 24. If any wine contains liquors made outside of Puerto Rico, the country of origin for each such liquor shall be stated on the formula. All formulas required by this paragraph shall be submitted on ATF Form 5120.29, in accordance with § 250.54.

(c) *Cancellation of registered formulas.* The procedures for the cancellation of a registered distilled spirits or wine formula are prescribed in 27 CFR Part 70, Subpart E.

* * * * *

(Approved by the Office of Management and Budget under control number 1512–0204)

Par. 34. Section 250.51(b)(2) is revised to read as follows:

§ 250.51 Formulas for articles, eligible articles and products manufactured with denatured spirits.

* * * * *

(b) * * *

(2) Products made with specially denatured spirits shall be made in accordance with a general-use formula approved as provided in Part 20 of this chapter, or an approved formula on Form 5150.19, or previously approved on ATF Form 1479–A or registered on 27–B Supplemental.

* * * * *

Par. 35. Sections 250.53 and 250.54 are amended by adding the words ''or registered'' after the word ''approved'' wherever it appears.

Par. 36. Section 250.55 is revised to read as follows:

§ 250.55 Previously approved formulas.

(a) Any formula on Form 27–B Supplemental that was approved before (effective date of final rule) is included as a registered formula as required by 27 CFR 5.26(a) and shall remain in effect until cancelled or voluntarily surrendered. Except as provided in paragraph (b) of this section, any person holding such a formula is not required to submit a new formula.

(b) Any change in a registered formula shall require the filing of a new Form 5110.38. After a change in a formula has been registered, the original formula shall be surrendered to the Director.

(c) If a registered formula on Form 27–B Supplemental indicates that carbon dioxide will be added to, or retained in, still wine, the notice requirement of § 250.52 shall not apply.

Par. 37. Section 250.173(b)(4) is amended by adding the words ''or registered'' after the word ''approved''.

Par. 38. Section 250.197 is amended by removing the word ''approved'' and adding in its place the word ''registered'', and by adding a second sentence to read as follows:

§ 250.197 Furnishing formula to consignee.

* * * Any formulas that were approved before (effective date of final rule) are included as registered formulas, without any resubmission by the holder of the approved formula or notification by ATF.

* * * * *

Par. 39. Sections 250.205(a)(4) (i) and (ii) are amended by adding the words ''or registered'' after the word ''approved''.

Par. 40. Section 250.220 is amended by revising paragraph (b) and by adding new paragraph (c) to read as follows:

§ 250.220 Formulas for liquors.

* * * * *

(b) *Wine.* Persons in the Virgin Islands who ship wine to the United States shall comply with the formula requirements of Part 24 of this chapter. If any wine contains liquors made outside of the Virgin Islands, the country of origin for each such liquor shall be stated on the formula. All formulas required by this paragraph shall be submitted on ATF Form 5120.29, in accordance with § 250.224.

(c) *Cancellation of registered formulas.* The procedures for the cancellation of a registered distilled spirits or wine formula are prescribed in 27 CFR Part 70, Subpart E.

Par. 41. Section 250.221(b)(2) is revised to read as follows:

§ 250.221 Formulas for articles, eligible articles and products manufactured with denatured spirits.

* * * * *

(b) * * *

(2) Products made with specially denatured spirits shall be made in accordance with a general-use formula approved as provided in Part 20 of this chapter, or an approved formula on Form 5150.19, or previously approved on ATF Form 1479–A or registered on 27–B Supplemental.

* * * * *

Par. 42. Sections 250.223 and 250.224 are amended by adding the words ''or registered'' after the word ''approved'' wherever it appears.

Par. 43. Section 250.225 is revised to read as follows:

§ 250.225 Previously approved formulas.

(a) Any formula on Form 27–B Supplemental that was approved before (effective date of final rule) is included as a registered formula as required by 27 CFR 5.26(a) and shall remain in effect until cancelled or voluntarily surrendered. Except as provided in paragraph (b) of this section, any person holding such a formula is not required to submit a new formula.

(b) Any change in a registered formula shall require the filing of a new Form 5110.38. After a change in a formula has been registered, the original formula shall be surrendered to the Director.

(c) If a registered formula on Form 27–B Supplemental indicates that carbon dioxide will be added to, or retained in, still wine, the notice requirement of § 250.222 shall not apply.

Par. 44. Section 250.309(b)(4) is amended by adding the words ''or registered'' after the word ''approved''.

Signed: October 17, 1995.

John W. Magaw,

Director.

Approved: October 24, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–28471 Filed 11–24–95; 8:45 am]

BILLING CODE 4810–31–U

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Appropriateness of Requested Single Location Bargaining Units in Representation Cases

AGENCY: National Labor Relations Board.

ACTION: Notice of extension of time for filing comments to proposed rulemaking.

SUMMARY: The National Labor Relations Board gives notice that it is extending the time for filing comments on the proposed rulemaking on the appropriateness of requested single location bargaining units in representation cases.

DATES: The comment period which presently ends at the close of business on November 27, 1995, is extended to the close of business on January 22, 1996.

ADDRESSES: Comments on the proposed rulemaking should be sent to: Office of the Executive Secretary, 1099 14th Street, NW., Room 11600, Washington, DC 20570.

FOR FURTHER INFORMATION CONTACT:

John J. Toner, Acting Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: The Board's notice of proposed rulemaking on the appropriateness of requested single location bargaining units in representation cases was published in the Federal Register on September 28, 1995 (60 FR 50146). The notice provided that all responses to the notice of proposed rulemaking must be received on or before November 27, 1995. However, the Board has recently received two requests that the time limit be extended. For this reason, and in view of the recent shutdown of operations due to lack of appropriated funds, the Board has decided to extend the period for filing responses to the notice of proposed rulemaking until the close of business on Monday, January 22, 1996.

Dated: Washington, DC, November 20, 1995.

By direction of the Board.

John J. Toner,

Acting Executive Secretary.

[FR Doc. 95–28858 Filed 11–24–95; 8:45 am]

BILLING CODE 7545–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–039–FOR]

Maryland Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Maryland regulatory program (hereinafter the ''Maryland program'' under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Maryland rules and statutes pertaining to remining. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received by 4:00 p.m. E.S.T. December 27, 1995. If requested, a public hearing on the proposed amendment will be held on December 22, 1995. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T., on December 12, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, at the address listed below.

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101. Telephone: (717) 782–4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532. Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 1, 1980, Federal Register (45 FR 79449). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15, and 920.16.

II. Description of the Proposed Amendment

By letter dated October 26, 1995 (Administrative Record No. MD–573.00), Maryland submitted a proposed amendment to its program pursuant to SMCRA at its own initiative. The remining provisions of the Annotated Code of Maryland (Code) and the Code of Maryland Regulations (COMAR) that Maryland proposes to amend are: Sections 7–501, 7–505, and 7–511 of the Code which implements the provisions of House Bill 1136 pertaining to lands eligible for remining and COMAR 08.20.14—Release of Bonds on Remining Areas.

Specifically, Maryland proposes to: (a) Limit the period of operator responsibility for successful revegetation to two full years on lands eligible for coal remining and five full years for any reported area other than lands eligible for coal remining, (b) define ''land eligible for remining'' as ''any land that would otherwise be eligible for expenditures under subtitle 9 of this title,'' (c) prohibit the issuance of a strip mining permit on slopes of 20 degrees or more from the horizontal except in the case of a land eligible for remining when the land could be restored to its original contour, (d) delete definitions of ''net project construction cost'' and ''project construction cost,'' and (e) establish regulations for the release of bonds on remining areas.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in

this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on December 12, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 1995.

David G. Simpson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–28863 Filed 11–24–95; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 946

[VA–104–FOR]

Virginia Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of five explanatory statements written to clarify and assist the implementation of, and compliance with, recent changes to §§ 480–03–19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas. The amendment is intended to address a required program amendment at 30 CFR 946.16(a).

DATES: Written comments must be received by 4:00 p.m., E.S.T. on December 27, 1995. If requested, a public hearing on the proposed amendment will be held on December 22, 1995. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on December 12, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field

Office, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.
Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, Federal Register (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated October 31, 1994 (Administrative Record No. VA–839), Virginia proposed to amend section 480–03–19.816/817.102(e) to clarify the Virginia regulations that are applicable when coal processing waste and underground development waste is used as backfill material for mined-out areas. The amendment was submitted to settle interpretational differences between Virginia and OSM relative to how the coal mine waste regulations apply to waste materials placed in backfills.

Virginia's submittal of the amendment to section 480–03–19.816/817.102(e) was accompanied by a detailed explanation of the intended implementation and scope of the proposed amendment. OSM approved the amendment on August 8, 1995 (60 FR 40271) to the extent that the amendments are implemented as explained by Virginia in its October 31, 1994, submittal letter. In addition, OSM also required (at 30 CFR 946.16(a)) that Virginia further clarify the implementation of the changes by amending the Virginia program as follows:

(1) Define the term ''suitable;''

(2) Add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill;

(3) Add to 480–03–19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled.

(4) Define the term ''small'' to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope;

(5) Add a requirement that whenever coal refuse is placed on preexisting benches for the purpose of returning the benches to approximate original contour (AOC), the performance standards for the placement of excess spoil on preexisting benches will be followed.

By letter dated October 13, 1995 (Administrative Record No. VA–865), Virginia submitted its response to the required amendments at 30 CFR 946.16(a). The amendment consists of five statements that are attached to a letter to be sent to coal operators, consultants, Virginia Division of Mined Land Reclamation (DMLR) personnel, and other interested parties. The five statements are intended to clarify the intended implementation and scope of the recently approved amendments to section 480–03–19.816/817.102(e). The proposed amendments are as follows:

1. Clarification of the Term ''Suitable''

The Department of Mines, Minerals, and Energy (DMME) has not promulgated a regulatory definition for the term ''suitable'' as used at 480–03–19.816/817.102(e) since the ordinary usage (Webster—satisfactory for a use or purpose) is intended. DMME will consider material suitable provided it is satisfactory for the purpose of meeting the Virginia program performance standards for each site specific circumstance. For an example, the physical cohesive property of a given waste material under specific site conditions will be considered suitable provided the required (1.3) static safety factor can be achieved and landslides prevented (see 480–03–19.816/817.102(a) and (f)). Waste material is considered suitable provided the host site conditions, the material's chemical and physical characteristics, and the disposal techniques collectively demonstrate compliance with the Virginia program performance standards, including sections 480–03–19.816/817.41, 480–03–19.816/817.74, 480–03–19.816/817.81, 480–03–19.816/817.95, 480–03–19.816/817.97, 480–03–19.816/817.111–116, and 480–03–19.816/817.133.

2. Seeps, Springs, or Other Discharges in the Backfill

The Division of Mined Land Reclamation (DMLR) finds it necessary for the applicant to determine and identify in the application the location of seeps, springs, or other discharges in any area proposed for backfilling with coal mine waste. Such information is crucial to the applicant's site selection and backfill design as well as to DMLR's environmental impact analysis. DMLR has initiated the process to revise its regulations to be more specific with regard to seeps and springs in such backfills. In the meantime, DMLR interprets 480–03–19.780.21 (f) and (h) and 480–03–19.784.14 (e) and (g) as authority for this requirement.

3. Permit Condition/Quarterly Analysis—Clarification

The Virginia regulations at 480–03–19.773.17(b) provide authority for DMLR to impose permit conditions in addition to those mandated by this section. When the physical or chemical characteristics of coal mine waste used as backfill material are subject to change, DMLR will specify a condition in the permit approval document requiring the appropriate sampling and analysis necessary to ensure continued compliance with the performance standards. (Examples of circumstances in which DMLR requires periodic analysis of coal mine refuse, and/or backfill include, but is not limited to: Refuse produced by preparation plant serving several operations; refuse produced over a large areal extent at a single operation; refuse produced by several operations; and refuse of varying quality produced at several locations within one operation.)

4. ''Small Area''—Clarification

At 480–03–19.816/817.102(e), the Virginia regulations provide that a variance to the requirement at 480–03–19.816/817.83(a)(2) may be approved by DMLR provided ''the applicant demonstrates that the area above the refuse pile is small and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

DMLR intends to consider areas *small* provided the drainage area is 500 feet or less as measured along the slope. However, DMLR will grant such a variance only when there are no channeled flows, and if during storm events, there is only sheet flow.

5. Preexisting Benches—Clarification

DMLR will approve an application to place coal refuse on preexisting benches for the purpose of returning the benches

to the approximate original contour provided the performance standard for the placement of excess spoil on preexisting benches will be followed. The preexisting bench standard are found at 480–03–19.816/817.74.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Witten Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments relieved after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. by close of business on December 12, 1995. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act.

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 1995.

David G. Simpson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 95–28864 Filed 11–24–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[FRA Docket No. RSGC–2, Notice No. 9]

RIN 2130–AA80

Locomotive Visibility; Notice of Proposed Rulemaking, Public Hearing

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Proposed rule; extension of comment period and notice of public hearing.

SUMMARY: Under the authority of 49 U.S.C. 20103, 20143, and 20701, FRA will hold a public hearing in the format of a technical conference on November 28, 1995, in order to hear comments on the Locomotive Visibility Notice of Proposed Rulemaking (NPRM). This NPRM, published on August 28, 1995, at 60 FR 44457, would change headlight regulations for locomotives by requiring two auxiliary lights that would be placed on the front of the locomotive to form a triangle with the headlight. FRA believes this arrangement will increase locomotive visibility and help reduce grade crossing accidents and trespasser injuries. The meeting will be open to any interested person who wishes to attend.

The docket for this rulemaking will be immediately reopened for written comments. This extension will end and the comment period will close on December 12, 1995.

DATES: The public hearing will be held on Tuesday, November 28, 1995, beginning at 9:30 a.m. FRA anticipates that this public hearing will conclude at 12:00 p.m.

ADDRESSES: The public hearing will be held in room 3288, Nassif Building, 400 7th Street, SW., Washington, DC 20595.

FOR FURTHER INFORMATION CONTACT: Program Person: Gordon Davids, Program Manager, Office of Safety Assurance and Compliance, FRA, Washington, DC 20590. Telephone: (202) 366–0466. Principal Attorney: Kyle M. Mulhall, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366–0635.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 95–28816 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD20

Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands

AGENCY: Fish and Wildlife Service, Interior

ACTION: Reopening of the comment period for the proposed special rule

SUMMARY: On February 17, 1995, the Fish and Wildlife Service (Service) published a proposed special rule in the Federal Register (60 FR, 9484, February 17, 1995) pursuant to section 4(d) of the Endangered Species Act (Act), to replace the blanket prohibitions against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California. The comment period was scheduled to end on November 24, 1995. The intent of this document is to reopen the comment period to January 26, 1996.

DATES: The comment period for written comments is reopened until January 26, 1996.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Mr. Curt Smitch, Assistant Regional Director, North Pacific Coast Ecoregion, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501 (360/534–9330); or Mr. Ron Crete, Manager, Habitat Protection and Restoration, Office of Technical Support-Forest Resources, P.O. Box 3623, Portland, Oregon 97204–3623 (503/326–6700).

SUPPLEMENTARY INFORMATION:

Background

The implementing regulations for threatened wildlife generally incorporate the prohibitions of section 9 of the Endangered Species Act of 1973, as amended (Act), for endangered wildlife, except when a ''special rule'' promulgated pursuant to section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina,* was listed as a threatened species in 1990, the Service did not promulgate a special section 4(d) rule and therefore, all of the section 9 prohibitions, including the ''take'' prohibitions, became applicable to the species. To replace the blanket prohibitions against take of spotted owls, the Service published a proposed special rule, 50 CFR Part 17, on February 17, 1995, in the Federal Register, pursuant to section 4(d) of the Act, which proposes a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: November 20, 1995.

Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 95–28851 Filed 11–24 –95; 8:45am]

Billing Code 4310–55–P

Notices

Federal Register
Vol. 60, No. 227
Monday, November 27, 1995

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

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Collection Requirements Submitted for Public Comment: 7 CFR Part 246, Special Supplemental Nutrition Program for Women, Infants and Children (WIC)

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request an extension for and revision to a currently approved information collection in support of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

DATES: Comments on this notice must be received by January 26, 1996, to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to: Barbara Hallman, Branch Chief, Supplemental Food Programs Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR Part 246), Special Supplemental Nutrition Program for Women, Infants and Children (WIC).

OMB Number: 0584–0043.

Expiration Date of Approval: November 30, 1995.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The purpose of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is to provide supplemental foods, nutrition education, and health care referrals to low income, nutritionally at risk pregnant, breastfeeding and postpartum women, infants, and children up to age 5. Currently, WIC operates through State health departments in 50 States, the District of Columbia, Puerto Rico, Guam, America Samoa and the Virgin Islands. Additionally, 32 Indian tribal bands and organizations serve as State agencies.

This information collection is for the reporting and recordkeeping burdens associated with the WIC Program regulations. This request is being made to extend the current information collection for an additional three years. The information reporting and recordkeeping burdens are necessary to ensure appropriate and efficient management of the WIC Program.

State Plans are the principal source of information about how each State agency WIC Program operates. Local agency applications and vendor agreements are necessary to delineate responsibility, and ensure the accountability of State agencies, local agencies, and vendors. Certification data provide the basis for determining the eligibility of program applicants. Local agency nutrition education plans facilitate the provision of quality nutrition education by local agencies and allows FCS and the State agency to assess the quality and quantity of nutrition education provided to participants. The vendor monitoring report enables FCS to evaluate vendor trends and assess State agency efforts to control vendor fraud and abuse. Documentation of participant and vendor complaints enables FCS and the State agency to identify problems at the local agency level. The requirements that the State agency: identify the disposition of food instruments; request approval for specified costs; justify the carry-over and backspending of funds; submit preliminary and final closeout reports; submit financial, participation, and food delivery reports to FCS; develop funding procedures for local agencies; report the status of participant claims, and request waivers for development of alternate cost containment systems, ensure the accountability of Federal funds and promote efficient program management. The requirement for State agency corrective action plans ensures the problem areas of program management are rectified. Submission of information to FCS for the biennial report to Congress ensures FCS compliance with Federal law. The food delivery requirements assist in controlling vendor fraud and abuse and promoting the integrity of State agency food delivery systems.

The information collected is used by FCS to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .095 hours per response.

Respondents: The respondents are State and local governments, individuals or households, and businesses.

Estimated Number of Respondents: 7,045,927 respondents.

Estimated Number of Responses per Respondent: 1.71.

Estimated Total Annual Burden on Respondents: 1,151,971 hours.

Copies of this information collection can be obtained from Cato Watson, Agency Information Collection Coordinator, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: November 10, 1995.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 95–28768 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–30–U

Forest Service

St. Joe Weed Control Project; Idaho Panhandle National Forests, Benewah, Shoshone and Latah Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of noxious weed

treatment on the St. Joe Ranger District. Treatment sites would be located at various locations across the district and are within the St. Maries River, St. Joe River, and North Fork of the Clearwater River Ecosystems, St. Joe Ranger District, Idaho Panhandle National Forests, Benewah, Shoshone and Latah Counties, Idaho. Most treatment sites are located near or along forest roads, trails or developed recreation sites.

The proposed action to control populations of noxious and undesirable weeds on certain travel corridors and areas is designed to prevent the spread of these weeds and promote the retention and health of native and/or desirable plants within these ecosystems. The proposed action would use an integrated pest management approach to control weeds. This approach includes mechanical, biological, cultural and chemical control.

Over 28 established, new or potential species of weed will be considered for control. The major species considered for control include spotted knapweed (Centaurea maculosa), diffuse knapweed (Centaurea diffusa), orange hawkweed (Hieracium aurantiacum), meadow hawkweed (Hieracium pratense), purple loosestrife (Lythrum salicaria), dalmation toadflax (Linaria dalmatica), sulfur cinquefoil (Potentilla recta L.), yellow starthistle (Centaurea solstitialis), hound's-tongue (cynoglossum officinale) and common tansy (Tanacetum vulgare).

This project level EIS will tier to the Idaho Panhandle National Forests Weed Pest Management EIS, October 1989, the Idaho Panhandle National Forests Land and Resource Management Plan (Forest Plan), September 1987, and the Final EIS Noxious Weed Management Projects, Bonners Ferry Ranger District, September 1995.

DATES: Written comments and suggestions should be received on or before January 11, 1996.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or request to be placed on project mailing list to Brad J. Gilbert, District Ranger, St. Joe Ranger District, P.O. Box 407, St. Maries, ID 83861.

FOR FURTHER INFORMATION CONTACT: Mary Laws, EIS Team Leader, St. Joe Ranger District, phone number 208–245–4517.

SUPPLEMENTARY INFORMATION: Weed control is proposed on 131 sites that have been identified on Joe Ranger District. These sites range in size from approximately 0.10 acre to 35 acres and total approximately 3,360 gross acres. These sites represent less than 0.47% of the 720,000 acres of National Forest System Lands on the St. Joe Ranger District.

There are a variety of purposes for weed control on the St. Joe Ranger District. The primary purposes are: (1) To protect the natural condition and biodiversity of the St. Maries River, St. Joe River and North Fork of the Clearwater River ecosystems by preventing the spread of aggressive, non-native species that displace native vegetation; (2) prevent or limit the spread of weeds to areas identified as weed free; (3) reduce weed seed sources along main travel routes; while also complying with Federal and State Laws regulating management of noxious weeds; and cooperating with other agencies and private individuals concerned with the management of weeds.

The treatment sites are located across the district. The greatest number of sites are located in the St. Joe Ecosystem. Other sites are located in the St. Maries River and North Fork of the Clearwater River Ecosystems. The Idaho Panhandle National Forests Land and Resource Management Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The Forest Plan directed that forest pests be managed by an integrated pest management approach.

The decision to be made is what actions, if any, should be taken to control weeds in these ecosystems, where treatment should be applied, and what type of treatment(s) should be used.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, in which none of the proposed treatment activities would be implemented. Additional alternatives will represent the range of control methods currently available for treatment of weeds, including non-chemical methods.

Public participation is an important part of the analysis and will play an important role in developing the alternatives. The initial scoping process (40 CFR 1501.7) will occur during November and December, 1995. The mailing list for public scoping will be developed from response to this NOI and to the Idaho Panhandle National Forest Quarterly Schedule of Proposed Actions, October, 1995. In addition, the public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. Public meetings may be held, but have not been scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., cumulative effects).

Some public concerns have already been identified from initial interdisciplinary review of the weed control proposal. The following significant issues have been identified so far:

1. Current and potential impacts of noxious weeds on ecosystem communities and processes; threatened, endangered, and sensitive plants and animals; soils; water quality; aesthetics; wildlife and fish; and recreational opportunities.
2. Potential impacts of week control.
3. Potential effects upon human health from the application of herbicides.

This list will be verified, expanded, or modified based on public scoping and interdisciplinary review of this proposal.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March, 1996. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the Federal Register. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court ruling related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental

statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is St. Joe Ranger District, P.O. Box 407, St. Maries, ID, 83861.

Dated: November 6, 1995.

Bradley J. Gilbert,

District Ranger.

[FR Doc. 28774 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–11–M

Intergovernmental Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC) will meet on December 7, 1995, at the Monarch Hotel, 12566 SE 93rd Avenue, Clackamas, Oregon 97015. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:00 a.m. on December 7 and continue until 4:30 p.m. Agenda items to be discussed include, but are not limited to: (1) Discussions on the Joint Planning Team charter for the RCERT/IAC; (2) a progress report on riparian reserve evaluation methods and techniques; (3) an update on Rescission Bill analysis; (4) a proposal for the 1996 IAC meeting schedule; (4) a discussion of IAC performance during 1995; (5) recommendations for proposed data standards and their implementation by the IRICC Vegetation Strike Team; and (6) a Forest Ecosystem Management Assessment Team presentation. The IAC meeting will be open to the public. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

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

Dated: November 14, 1995.

Ranotta K. McNair,

Acting Director.

[FR Doc. 95–28653 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Change in the 1996 Distance Learning and Telemedicine Application Submission Date

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Status of FY 1996 Distance Learning and Telemedicine Grant Program.

SUMMARY: The Rural Utilities Service (RUS) is announcing the status of the 1996 Distance Learning and Telemedicine Grant Program.

SUPPLEMENTARY INFORMATION: On October 21, 1995, the RUS Distance Learning and Medical Link Grant Program (DLMLGP) was reauthorized by Congress and appropriated $7.5 million in grant funding.

RUS is currently revising the DLMLGP's governing regulations to, among other things, further clarify the criteria for ranking grant applications. Due to these revisions, a FY 1996 grant application filing date has not been established. Applicants wishing to submit an application should postpone their submissions until new final regulations are available. It is expected that revised proposed regulations will be published for public comment by the end of this calendar year. With this schedule, the final rule could be available by the Spring of 1996. All applications received by RUS prior to publication of the final regulations will be returned to the applicants.

For additional information, please contact Barbara L. Eddy, Deputy Assistant Administrator, Telecommunications Program at (202) 720–9556.

Dated: November 20, 1995.

Wally Beyer,

Administrator.

[FR Doc. 95–28766 Filed 11–24–95; 8:45 am]

BILLING CODE 3410–15–P

ARCTIC RESEARCH COMMISSION

Meeting

November 8, 1995.

Notice is hereby given that the Arctic Research Commission will hold its 41st Meeting in Moss Landing, California, on December 11–12, 1995. On Monday, December 11, a Business Session open to the public will convene at 9:00 a.m. at the Moss Landing Marine Laboratory. Agenda items include: (1) Agency Reports, (2) Reports from Congressional Liaisons, (3) A report on the Engineering Workshop held in Anchorage, Alaska in November, (4) Reports of Task Force Activities.

On Tuesday, December 12, the Business Session will reconvene at 9:00 a.m. Agenda items for this session include: (1) Reports on Recent Research Activities, (2) Travellers Reports, (3) Correspondence.

An Executive Session will follow the close of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 95–28857 Filed 11–24–95; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 950807204–5204–01]

Standards for Address Lists: Public Law 103–430

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Final Program.

SUMMARY: In accordance with Public Law (Pub. L.) 103–430, ''The Census Address List Improvement Act of 1994,'' the Census Bureau will accept address

lists from States,[1] tribal governments, and local units of general purpose government,[2] as well as from metropolitan planning organizations and other regional planning agencies (referred to hereafter as ''tribal and local governments'') for the purpose of building and updating a nationwide address list called the Master Address File (MAF). The Census Bureau is developing the MAF to document the address of every living quarters in the United States and its territories and will use it to implement the full range of Census Bureau statistical programs. The Census Bureau will begin accepting address lists from tribal and local governments (''address lists'') in October 1995. Following Census Bureau review and processing of these address lists, the Census Bureau will provide detailed information to the submitting tribal or local government documenting the actions taken regarding each address. The program for using address lists to build the MAF and keep it up to date is referred to as the Program for Address List Supplementation (PALS). The Census Bureau issued a Notice of Proposed Program and Request for Comments in the Federal Register, (60 FR 45137) on Wednesday, August 30, 1995. That notice solicited comments on the proposed Standards for Address Lists. The Census Bureau did not receive comments on the Federal Register Notice and now invites tribal and local governments to participate in the PALS.

FOR FURTHER INFORMATION CONTACT: Vic Meiller, Geography Division, Bureau of the Census, Washington, D.C., telephone (301) 457–1106, or e-mail to ''vic.meiller@census.gov.''

SUPPLEMENTARY INFORMATION: Later in the decade, the Census Bureau will provide relevant portions of the MAF to ''Census Liaisons'' designated by tribal and local governments for their review and concurrence in conjunction with the 2000 census (a process herein referred to as ''MAF review''), consistent with the confidentiality provisions of Title 13, United States Code, as specified in Pub. L. 103–430. Further, the Office of Information and Regulatory Affairs within the Federal Office of Management and Budget, in consultation with the Census Bureau, will develop an appeals process for Pub.L. 103–430 activities. Because the plan for these future activities is under development, the timetable for the activities described in this notice is tentative. Future notices (to be published by late 1996) will announce and seek comments on a detailed timetable for all address list improvement activities, information on Census Bureau processes for verifying addresses, and the substantive details of the appeals process.

The Census Bureau will begin accepting and processing address lists containing city-style addresses (such as, those with house number-street name addresses) beginning in October 1995. The Census Bureau will publish standards and a timetable for processing lists containing noncity-style addresses (those with rural route and box number, P.O. Box number, or general delivery addresses) in a future notice (to be published by late 1996). As address lists change due to deletions, corrections, and additions, the Census Bureau will accept second and subsequent submissions on a continuous basis, and process them as resources permit.

The Census Bureau will attempt to use the most recent address information provided by a tribal or local government to conduct each subsequent census and survey, regardless of when that government provides it. Before the 2000 decennial census, the Census Bureau will seek to reach agreement with tribal and local officials—through processes of list matching, address verification, MAF review by the designated Census Liaisons, and Census Bureau feedback on results—about the inventory of living quarters addresses within their jurisdictions. Addresses on address lists submitted to the Census Bureau by mid-calendar year 1998 (exact date to be determined and announced later) will be included in the full set of processes for MAF review described above. This MAF review process will provide an important opportunity for the designated Census Liaisons to check the Census Bureau's geographic assignment of each residential address within governmental unit boundaries and individual census blocks. Addresses on address lists submitted to the Census Bureau by the first quarter of 1999 (exact date to be determined and announced later) also will be eligible for the appeals process called for in Pub. L. 103–430. Between the first quarter of 1999 and the date for the 2000 census, the Census Bureau will accept and process address lists only to the extent they can be verified in other 2000 census operations. Addresses on lists submitted after that date will not be eligible for the Pub. L. 103–430 appeals process. These late submissions will be most productive in helping the Census Bureau include in the census all housing units in existence as of the census date when tribal and local governments have previously submitted address lists.

To effectively use the addresses contained on address lists to build and update the MAF, and to provide meaningful feedback to the tribal and local list providers, the Census Bureau must determine a geographic location for each address. The Census Bureau will do this through an automated match to its geographic support system, the Topologically Integrated Geographic Encoding and Referencing [TIGER] data base. If the Census Bureau is unable to determine a geographic location for an address, it will request that the submitting tribal or local government supply an address range and street location for the individual address. The Census Bureau can provide maps for this purpose. For new addresses submitted after the first quarter of 1999 and before the date for the 2000 census, the Census Bureau requests that the tribal or local government provide this map location information for all such new addresses at the time the address lists are submitted.

The Census Bureau will conduct procedures to independently verify all addresses it adds to the MAF from address lists (for example, through matches to address information from the U.S. Postal Service, other independent sources, or its own field operations) and will remove from the MAF those addresses for which it cannot find confirming evidence.

The Census Bureau will treat all address information received from tribal and local governments as confidential, pursuant to Title 13, United States Code, in accordance with Public Law 103–430; this does not limit in any manner the right of the tribal or local government to use its own address information, nor does it preclude the Census Bureau from providing detailed feedback to the submitting jurisdiction about the Census Bureau's disposition of addresses on its lists.

Standards for Address Lists Used in Conjunction With Public Law 103–430

The basic standards proposed in Section 1, below, describe the address list characteristics that will enable the Census Bureau to use the tribal and local address information. Address lists that also meet the supplemental standards specified in Section 2, below, will improve the Census Bureau's

[1] The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and any other territory or possession of the United States.

[2] As defined in Section 184 of Title 13, United States Code, the term ''local units of general purpose government'' means the government of a county, municipality, township, Indian tribe, Alaska Native village, parish, borough, or other unit of government other than a state.

ability to process the information in a timely manner and will improve the match rate between the addresses on those lists and the addresses in the MAF. Along with other factors, such as when the address lists are received, the Census Bureau will consider the extent to which each address list meets these standards in setting priorities for processing.

1. Basic Standards

The following basic standards apply to all address lists that a tribal or local government plans to submit to the Census Bureau as part of the PALS.

a. Addresses must accurately reflect residential units existing at the time of submission. The definition of ''residential unit'' includes housing units in single- or multiple-occupancy structures and in group living quarters where unrelated individuals share the facilities of a structure. Group living quarters include residential units such as college dormitories, orphanages, nursing homes, military barracks, prisons, and large rooming or boarding houses.

A housing unit is a house, an apartment, a group of rooms, or a single room that is occupied as a separate living quarters or, if vacant, intended for occupancy as a separate living quarters. A separate living quarters is one in which the occupants live and eat separately from other people in the building and for which the occupants have direct access from outside the building or through a common hall.

b. City-style addresses must show the basic street address (such as, house number and street name). The street name must include applicable street directional and street type indicators (for example, ''105 S MAIN ST NW'').

c. For jurisdictions that have converted from a rural-style to a city-style address system, or that have replaced one city-style system with another city-style system, the addresses must reflect the current system. (See also related non-mandatory standards.) File documentation and the address list must indicate whether the current address system is recognized for mail delivery by the U.S. Postal Service (USPS).[3]

d. If the address list includes both residential and nonresidential addresses, it must distinguish between the two. (If an address is used to identify a unit used for both residential and nonresidential purposes, it should be identified as ''residential'' or ''mixed use'' for purposes of this standard.)

e. For jurisdictions that include addresses in more than one ZIP Code, each address record must include the correct and current 5-digit ZIP Code.

f. Addresses in a multiunit structure must include a unit designation for each housing unit (for example, ''101 MAIN ST, APT A'') and a tally of the total number of individual dwelling units located within the multiunit structure. In addition to (but not instead of) the basic street address, it is useful for the Census Bureau to receive the building, apartment, and complex names as well.

If individual unit designations are not available, each address record must include descriptive information that identifies the addresses for multiunit structures separately from those addresses for single-unit structures. The options described below are in preferential order.

(1) When the address list has in its inventory only one record representing a multiunit structure:

i. Include as part of each address record a tally of the total number of individual dwelling units located within the multiunit structure.

ii. Include as part of each address record a single character signifying that it represents a multiunit structure (for example, ''M'').

(2) When the address list includes a unique record for every individual unit, but does not contain distinguishing unit designations, mark each such record with a single character flag signifying that it represents an individual unit in a multiunit structure (for example, ''I'').

g. Tribal and local governments must provide with each address list documentation describing the file specifications, record layout (including field names, descriptions, character positions, and/or field delimiters), and data elements for each record in the address list, along with a description of the source of the address information.

2. Supplemental Standards

The following supplemental standards set forth desirable characteristics for address lists that a tribal or local government plans to submit to the Census Bureau as part of the PALS.

a. Address lists are most useful when they are submitted in a computer-readable format, using one of the following media: PC floppy disk, CD–ROM, 8-mm tape, or 9-track magnetic tape (no label with 1,600 or 6,250 BPI density). All media casings should have external labels that clearly identify the data contained and the name of the tribal or local government.

b. Computer-readable address lists are most useful when they are submitted using the file specifications and content format specified below:

(1) ASCII files with fixed length records.

(2) Separate records for each residential unit with an end-of-record indicator appropriate to the submitting government's operating system.

(3) Arrange the file content as:

Character position	Field
1–5	5-digit ZIP Code.
6–77	Street Address, including house number, street name, and within-structure designation.
78	Multiunit Indicator (a flag signifying whether or not the address record pertains to a multiunit structure; use for the situation represented by Item 1f(1)ii OR 1f(2)).
79–82	Multiunit Tally, right justified (the total number of units sharing the basic street address represented on the record; see Item 1f(1)i).
Optional Fields, With Suggested Positioning	
83–102 ...	Post Office Name.
103–104 .	2-character USPS State Abbreviation or 2-digit FIPS State Code.
105–107 .	3-digit FIPS County Code.
108–111 .	USPS Plus-4 add-on code.
112-end ..	Other Descriptive Information (for example, a single character indicator that distinguishes between addresses used for mail delivery and those that are not (Item 1c); a single character indicator that distinguishes between residential, nonresidential, and ''mixed use'' (Item 1d); a building name address (Item 2b(5)); the superseded address where a new address system has been put in place (Item 2b(6)); a single-character indicator that distinguishes between address records that are corrections, deletions, and additions (item 2g); and for those address records incorporating a correction from a previous address list submission, the old information (item 2g)).

The Street Address field (character positions 6–77) can be shortened if no address record requires the full allotted space. In order to save space, the tribal or local government may shorten each address record by reducing the size of the Street Address field, eliminating the optional fields, or repositioning the optional fields. Regardless of data

[3] For address lists wherein the city-style addresses are not recognized for mail delivery, the feedback provided by the Census Bureau will be on a different schedule and will lack the same level of detail as where the addresses are used for mail delivery.

format used, basic standard 1g requires that the tribal or local government document the file specifications, record layout, and data elements for each record in the address list.

The Street Address field should contain only the indicated information. It is highly desirable that this field NOT include person-name information, post office name, or state abbreviations.

(4) Files that have the components of the Street Address stored in separate fields should include documentation that defines the subfields within the Street Address field (character positions 6–77) and the position of each component of the address in their appropriate subfields. Please ensure that the documentation accurately describes the field arrangement.

(5) For residential units that are identified by both a house number-street name address and a building name address, it is most useful to have the house number-street name address in the Street Address field and the equivalent building name address in the Other Descriptive Information field. When the house number-street name address is unavailable, either place the building name address in the Street Address field or in the Other Descriptive Information field. Whichever is the case, please ensure that the documentation accurately describes the file content arrangement.

(6) In addition to providing computerized address list and documentation, it is very helpful for the tribal or local government to submit a hard-copy document containing a representative sample of address records.

c. For jurisdictions in which all addresses are in a single 5-digit ZIP Code, each address record should include the 5-digit ZIP Code.

d. Append the 4-digit USPS Plus-4 add-on code, along with the 5-digit ZIP Code, to each address record, if available.

e. If a tribal or local government is submitting information from more than one address list, it should consolidate and unduplicate the address lists before submitting them to the Census Bureau. Otherwise, the submitting government should specify the sequence in which the Census Bureau should process the multiple lists.

f. For jurisdictions that have changed address systems during the preceding five years, each address record should include both the current address and the superseded address.

g. For second or subsequent address list submissions, it is preferable that the new address lists include only additions, deletions, and corrections to the original list(s). Provide an indicator (diagnostic flag) that will distinguish between the new address records (for example, ''N''), records from an earlier list that now should be deleted (such as, ''D''), and the corrected records (such as, ''C''). For address records requiring corrections, provide the original depiction of the address in the Other Descriptive Information space allotment (character positions 112-end); this will significantly help the Census Bureau's efforts to identify and remove the superseded version of the address and avoid delivery of more than one questionnaire to the same household.

Dated: November 13, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–28854 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

[A–588–602]

Certain Carbon Steel Butt-Weld Pipe Fittings From Japan; Negative Final Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Negative Final Determination of Circumvention of Antidumping Duty Order.

SUMMARY: On September 20, 1995, the Department of Commerce (the Department) published a negative preliminary determination of circumvention of the antidumping duty order on certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings) from Japan, with respect to imports of Awaji Sangyo (Thailand) Co., Ltd. (AST).

We provided interested parties an opportunity to comment on our negative preliminary determination. We did not receive any comments. The final determination is unchanged from the preliminary determination.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 1987, the Department published in the Federal Register the antidumping duty order on butt-weld pipe fittings from Japan (52 FR 4167). On March 22, 1994, the Department received a petition from the U.S. Fittings Group (the petitioner) requesting that the Department conduct a circumvention inquiry on the antidumping duty order on butt-weld pipe fittings from Japan. The Department initiated a circumvention inquiry on October 31, 1994 (59 FR 54433). On September 20, 1995, the Department published in the Federal Register the negative preliminary determination of circumvention of the antidumping duty order on butt-weld pipe fittings from Japan (60 FR 48686). The Department has now completed this circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Scope of the Circumvention Inquiry

The products covered by this inquiry are certain carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting. These fittings are currently provided for under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written product description remains dispositive.

Induction pipe bends classifiable under subheading 7307.93.30 which have at one or both ends tangents that equal or exceed 12 inches in length are excluded from the scope of this inquiry.

The inquiry covers one manufacturer/exporter of butt-weld pipe fittings, AST. The period of inquiry is October 1, 1993 through September 30, 1994.

Negative Final Determination Of Circumvention Inquiry

We invited interested parties to comment on the preliminary determination. We received no comments. The final determination is therefore unchanged from the preliminary determination, and we determine that no circumvention of the antidumping duty order is occurring

within the meaning of section 781(b) of the Act.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is sanctionable violation.

This negative final determination of circumvention is in accordance with section 781(b) of the Act (19 U.S.C. 1677j(b)) and 19 C.F.R. 353.29(f).

Dated: November 14, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–28888 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–DS–P

Dartmouth College, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–056. *Applicant:* Dartmouth College, Hanover, NH 03755-3571. *Instrument:* MAT 252 Mass Spectrometer Upgrade. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 60 FR 39711, August 3, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The National Institutes of Health advises in its memorandum dated September 22, 1995, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 95–28890 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–100. *Applicant:* Florida International University, University Park, Miami, FL 33199. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used to provide transmission electron microscopy analysis for several research projects including the following:

(1) determining phases and crystal structures of the alloys (NiTi, NiTi-Hf, NiTi-Zr) at different temperatures,

(2) determining the role of dislocation on the two-way shape memory alloys,

(3) study of precipitate nucleation, growth, crystal structure transformation, and

(4) micro-composition analysis -- distribution for designing new types of high temperature shape memory alloys.

In addition, the instrument will be used for educational purposes as a teaching and research tool for graduate students, professors and research associates working with students. *Application Accepted by Commissioner of Customs:* October 12, 1995.

Docket Number: 95–102. *Applicant:* State University of New York at Buffalo, 330 Bonner Hall, Amherst, NY 14260. *Instrument:* Electron Microscope, Model JEM-2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for the study of the microstructure of metals, alloys, ceramics, intermetallic compounds, composites and polymers to identify crystalline/particle size, morphology, crystal structure, chemical composition and to analyze crystal defects and d-spacings of crystallographic planes. The instrument will also be used to provide valuable educational and practical experience to graduate students with hands on training and data interpretation. *Application Accepted by Commissioner of Customs:* October 17, 1995.

Docket Number: 95–103. *Applicant:* University of Virginia, P.O. Box 9010, Charlottesville, VA 22906. *Instrument:* SIR Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to measure the natural abundance stable isotope compositions of nitrogen and carbon in order to determine the authenticity and history of the organic constituent. In addition, the instrument will be used in a variety of existing courses and student investigations in ecology, geochemistry, hydrology and atmospheric sciences. *Application Accepted by Commissioner of Customs:* October 17, 1995.

Docket Number: 95–104. *Applicant:* Duke University Medical Center, Durham, NC 27110. *Instrument:* Stopped-Flow Spectrometer, Model SX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of enzymes such as sulfite oxidase, carbonic anhydrase and dimethyl sulfoxide reductase. Experiments will involve mixing enzyme and substrate in the rapid flow reaction analyser, stopping the flow at various times after the dead time of about 1.5 msec for the mixing and monitoring changes of the light absorption of the enzyme at specific wavelength in the ultraviolet or visible range of light. *Application Accepted by Commissioner of Customs:* October 17, 1995.

Docket Number: 95–105. *Applicant:* University of Washington, Department of Physiology & Biophysics, Box 357290, Seattle, WA 98195-7290. *Instrument:* Stopped-Flow Spectrometer, Model SX.17. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for investigations of subunits of a regulatory protein in cardiac and skeletal muscle, troponin and measurements on the proteins when reconstituted into muscle fibers. The objective of the investigations is to understand the molecular mechanism of regulation of

muscle contraction in cardiac and skeletal muscle by calcium. *Application Accepted by Commissioner of Customs:* October 19, 1995.

Frank W. Creel
Director, Statutory Import Programs Staff
[FR Doc. 95–28891 Filed 11–24–95; 8:45 am]
BILLING CODE 3510–DS–F

University of Michigan, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–072. *Applicant:* University of Michigan, Ann Arbor, MI 48109-1063. *Instrument:* ICP Multicollector Mass Spectrometer, Model Plasma 54. *Manufacturer:* Fisons Elemental, United Kingdom. *Intended Use:* See notice at 60 FR 48506, September 19, 1995.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) a double focusing magnetic sector design with extended geometry, (2) a block of nine Faraday collectors, (3) a Daly detector with ion counting and (4) a laser probe for spatial work.

This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel
Director, Statutory Import Programs Staff
[FR Doc. 95–28892 Filed 11–24–95; 8:45 am]
BILLING CODE 3510–DS–F

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U. S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold its fifth plenary meeting. The ETTAC was created on May 31, 1994, to promote a close working-relationship between government and industry and to expand export growth in priority and emerging markets for environmental products and services.

DATES AND PLACE: December 6, 1995, from 9:00 a.m to 5:30 p.m. and December 7, 1995, from 8:45 a.m. to 12:30 p.m. The meeting will take place in Room 6808 of the Department of Commerce, 14th Street and Constitution Ave., NW., Washington DC 20230.

The Committee will request the participation of several major environmental trade associations on questions of export enhancement for this industry. At the request of the ETTAC, representatives from the Department of Defense, the Export-Import Bank of the United States, the Department of Energy and the U.S.-Asia Environmental Partnership have been invited to discuss their roles and programs that support international environmental technologies trade. The Committee will also hear progress reports from each of its Subcommittees: Communications; Interagency Coordination; Finance; and Privatization; and be briefed by its Coordinators on cross-cutting issues: small business; services exports; and products exports.

This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jane Siegel, Department of Commerce, Room 1002, Washington DC 20230. Seating is limited and will be on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, phone (202) 482–5225, facsimile (202) 482–5665, TDD 1–800–833–8723.

Dated: November 20, 1995.
Anne Alonzo,
Deputy Assistant Secretary for Environmental Technologies Exports.
[FR Doc. 95–28904 Filed 11–24–95; 8:45 am]
BILLING CODE 3510–DR–P

North American Free Trade Agreement Article 1904 Binational Panel Reviews: Applications of Individuals to Serve on Binational Dispute Settlement Panels for Review of Antidumping and Countervailing Duty Matters

AGENCY: North American Free Trade Agreement Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Invitation for applications from U.S. candidates for nomination to the roster of persons eligible to serve on binational panels convened to review antidumping and countervailing duty matters under Chapter 19 of the North American Free Trade Agreement.

SUMMARY: Chapter 19 of the North American Free Trade Agreement (NAFTA) provides for the establishment of a roster of individuals unaffiliated with the U.S., Canadian or Mexican Governments who are willing to serve on binational panels convened to review: (1) final determinations in U.S., Canadian or Mexican antidumping or countervailing duty (AD/CVD) proceedings involving imports from other countries party to NAFTA; and (2) amendments to a NAFTA Party's antidumping or countervailing duty statutes. This notice invites applications from U.S. citizens wishing to be considered for inclusion on the roster of candidates eligible to be selected to serve on such panels and summarizes eligibility criteria for roster members and panelists.

DATE FOR SUBMISSIONS: Eligible citizens are encouraged to apply by December 11, 1995 to be considered for nomination to the roster in January 1996.

FOR FURTHER INFORMATION CONTACT: For further information concerning the form of the application, contact Sybia Harrison, Legal Assistant, Office of the General Counsel, Office of the U.S. Trade Representative (USTR) at (202) 395–3432. For information concerning Chapter 19 or the duties involved, contact Amelia Porges, Associate General Counsel, USTR, (202) 395–7305, James Southwick, Assistant General Counsel, USTR, (202) 395–6800, or James R. Holbein, U.S. Secretary, NAFTA Secretariat (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the NAFTA provides for review by binational panels of final determinations in U.S., Canadian and Mexican antidumping and countervailing duty (AD/CVD) proceedings involving imports from another NAFTA Party, and for review of amendments to U.S., Canadian and Mexican AD/CVD statutes.

(1) Review of AD/CVD Determinations

Final administrative determinations under the AD/CVD laws of the NAFTA Parties (Canada, Mexico and the United States) are subject to review by binational panels, rather than by

national courts, if requested by an appropriate U.S., Canadian or Mexican party to the proceeding, to the extent that such determinations involve products of a NAFTA Party. Binational panels decide whether such determinations are in accordance with the relevant national law, using the standards of review that would have been applied by a national court in such circumstances. A panel may uphold the determination or remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a binational ''Extraordinary Challenge Committee'' composed of current and former judges. The United States, Canada and Mexico are obligated under Chapter 19 to give effect to final panel decisions. Chapter 19 does not affect the right of NAFTA Parties to impose AD/CVD duties in accordance with their national laws, including against products of other NAFTA Parties.

(2) Review of Amendments to AD/CVD Statutes

Chapter 19 also provides that at the request of the United States, Canada or Mexico, a binational panel will review and issue a declaratory opinion concerning whether an amendment to another NAFTA Party's AD/CVD statutes made after entry into force of the NAFTA is inconsistent with the provisions of the General Agreement on Tariffs and Trade (GATT), the GATT Antidumping or Subsidies Codes, any successor agreements to which all three Parties are a party, or the object and purposes of the NAFTA.

Composition of Panels

Chapter 19 provides for the development of a roster of at least 75 potential panelists, with each government selecting at least 25 individuals. A separate five-person panel will be formed for each review of an AD/CVD administrative determination or statutory amendment. To form a panel the two governments involved will each appoint two panelists, normally by drawing upon individuals from the roster. If the governments cannot agree upon the fifth panelist, they will decide by lot which of them shall select the fifth panelist from the roster. The majority of individuals on each panel must be lawyers in good standing, and the chair of the panel must be a lawyer.

Criteria for Eligibility

Chapter 19 sets out a number of criteria for determining the eligibility of individuals to be included on the roster. Roster members must be U.S., Canadian or Mexican citizens, and must be of good character and of high standing and repute. They are to be chosen strictly on the basis of objectivity, reliability, sound judgment and general familiarity with international trade law. Panelists may not be affiliated with any of the three governments. Judges and retired judges are particularly encouraged to apply.

Selection Criteria and Procedures

Section 402 of the NAFTA Implementation Act and the accompanying Statement of Administrative Action establish U.S. implementing procedures and requirements for the selection of U.S. members of the roster. Section 402 provides that U.S. roster members are to be selected in accordance with the eligibility criteria set out in Chapter 19 of the FTA and without regard to political affiliation. Individuals who would have a conflict of interest in the exercise of the duties of a panelist will not be selected as roster members.

Under section 402, an interagency group, chaired by the United States Trade Representative (the USTR) must prepare a list of candidates qualified to be chosen by the United States as roster members. After consulting with the Senate Committee on Finance and the House Committee on Ways and Means in accordance with the requirements and schedule set out in section 402, the USTR will select the final list of U.S. candidates to serve on the roster.

Remuneration

Panelists will be remunerated at the rate of 400 Canadian dollars per day (approximately US$295 at current exchange rates) for each day of actual service, if they are chosen to serve on a panel.

Procedures for Applications

Applications must be typewritten and submitted along with 10 copies by December 11, 1995 to: Section 402 Committee, Room 223, Office of the General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20506. Applications should be headed ''Application for Inclusion on FTA Chapter 19 Roster of Panelists'' and must include the following information:

1. Name of the applicant.
2. Business address, telephone number and, if available, fax number.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Post-education employment history, including the dates and address of each prior position and a summary of responsibilities.
7. Relevant professional affiliations and certifications, including current bar admissions, if any.
8. List of publications, testimony and speeches, including a single copy (not 10 as in the application itself) of speeches and publications concerning subsidies or antidumping or countervailing duty law. Judges or former judges should list relevant judicial decisions.
9. Summary of any current and past employment by, or consulting or other work for, the U.S., Canadian or Mexican Governments.
10. List of proceedings brought under U.S., Canadian or Mexican antidumping or countervailing duty laws regarding imports of U.S., Canadian or Mexican products in which applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
11. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's: (a) familiarity with international trade law; and (b) willingness and ability to make time commitments necessary for service on panels.
12. Names, addresses, telephone and, if available, fax number of three individuals willing to provide information to USTR concerning the applicant's qualifications for service, including the applicant's familiarity with international trade laws, character, reputation, reliability, and judgment.

Note: Information provided by applicants in response to the above questions will be used by the interagency group for the purpose of initial screening of candidates. Further information regarding financial interests and affiliations may be requested from prospective candidates at a later stage of the selection process for purposes of assessing conflicts of interest, and the appearance of such conflicts, in respect to service on panels. Individuals selected as roster members will be required to make additional, specific disclosures in regard to conflicts and appearances of conflicts in connection with their appointment to particular panels. Copies of publications and speeches submitted under item 8 above will be returned to the applicant upon request. Information submitted will be subject to public disclosure. Any information that should not be disclosed to the public should be clearly indicated as such on each page of the submission.

Current Members

Current members of the Chapter 19 roster who are interested in continuing to serve on Chapter 19 panels should reapply in response to this notice. Current members who are no longer interested in serving on panels need not notify USTR as they will be automatically removed from the list. Individuals who have previously applied but have not been selected for a final candidate list may reapply.

False Statements

Pursuant to section 402(c)(5) of the Act, false statements by an applicant to USTR regarding their personal or professional qualification, or financial or other relevant interests, which bear on the applicant's suitability for placement on rosters and appointment to panels are subject to criminal sanctions under 18 U.S.C. 1001.

Dated: November 20, 1995.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 95–28889 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

[I.D. 110795G]

Western Pacific Fishery Management Council; Public Meetings

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 will hold its 88th meeting.

DATES: The meeting will be held on December 6–8, 1995. The Council's Standing Committees will meet from 8:00 a.m. to 5:00 p.m. on December 6. The full Council will meet from 9:00 a.m. to 5:00 p.m. on December 7–8. There will be a Fishermen's Forum from 4:00 to 6:00 p.m. on December 7.

ADDRESSES: The meeting will be held at the Kauai Coconut Beach Resort in Kapaa, Kauai, HI; telephone: (808) 822–3455.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Council will discuss and may take action on the following agenda items:

1. Report from the islands;

2. Reports from fishery agencies and organizations, including enforcement agencies;

3. Crustaceans, including:

(a) Status of Amendment 9, and

(b) Report on experimental fishing trip (including administration and enforcement, field observations, and summary of catch data);

4. Ecosystems and habitat, including a review of the humpback whale sanctuary draft Environmental Impact Statement;

5. Pelagic fishery issues, including:

(a) Longline permit actions, status of Longline Observer Program,

(b) Status of observer program year 1 evaluation,

(c) Status of NMFS intent to require industry to fund observer program and to shift program responsibility to an outside contractor, and

(d) Status of request for single-Council designation for management of domestic pelagic fisheries in the Pacific;

6. Bottomfish issues, including:

(a) Implementation of the Northwestern Hawaiian Islands (NWHI) catch reporting system,

(b) State of Hawaii progress with a management plan for Main Hawaiian Islands Onaga and Ehu, and

(c) Reconsideration of NWHI management system;

7. Native rights and indigenous fishing issues, including:

(a) Status of relevant Magnuson Conservation and Management Act amendments, and

(b) Kahoolawe Ocean Management Plan;

8. Program planning, including:

(a) Fishery development potential in the Marianas Archipelago,

(b) Status of joint Departments of Interior-Commerce working group legislation changing Federal fisheries policy in the Pacific,

(c) Councils' involvement in the Saltonstall-Kennedy grants program,

(d) Status of Western Pacific Fisheries Information Network, and

(e) Status of education outreach program;

9. Administrative matters;

10. Election of officers; and

11. Other business as required.

Special Accommodations

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 meeting date.

Dated: November 13, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–28760 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 110795F]

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 Scientific and Statistical Committee (SSC) of the Western Pacific Fishery Management Council will hold its 61st meeting.

DATES: The meeting will be held December 4–5, 1995, from 9:00 a.m. to 5:00 p.m. each day.

ADDRESSES: The meeting will be held at the Kauai Coconut Beach Resort in Kapaa, Kauai, HI; telephone: (808) 822–3455.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may take action on the following agenda items:

1. Humpback Whale Sanctuary, including a review of the draft Environmental Impact Statement;

2. Hawaii bottomfish issues, including:

(a) State of Hawaii progress with a management plan for Main Hawaiian Islands Onaga and Ehu, and

(b) Reconsideration of the Northwestern Hawaiian Islands (NWHI) management system;

3. NWHI lobster management, including:

(a) Results of August experimental fishing trip,

(b) Status of Amendment 9, and

(c) NMFS lobster research plan;

4. Pelagic fishery issues, including:

(a) Update on the Pelagic Fisheries Research Program,

(b) Review of the NMFS evaluation of year 1 of the Longline Observer Program,

(c) Status of the NMFS proposal to shift Longline Observer Program responsibility to an outside contractor,

(d) Status of the NMFS proposal to shift the burden of observer funding to

the longline industry (including a review of the draft Regulatory Impact Review),

(e) Status of the Council's request for single-Council designation to manage domestic pelagic fisheries in the Pacific, and

(f) Other business as required.

Special Accommodations

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 meeting date.

Dated: November 13, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–28759 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 111495C]

Endangered Species; Permits

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

ACTION: Receipt of applications for a scientific research/monitoring permit (P45U) and a scientific research/enhancement permit (P45V).

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service in Sacramento, CA (FWS) has applied in due form for permits to take adult and juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) for the purposes of scientific research, population monitoring, and hatchery-generated enhancement.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before December 27, 1995.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: FWS requests permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227). FWS requests the permits to continue the projects for which a take of listed salmon is currently authorized under permit 747. Permit 747 will expire on December 31, 1995.

FWS requests a 5-year scientific research/monitoring permit (P45U) for a take of adult and juvenile, listed salmon associated with five projects being conducted by the Northern Central Valley Fish and Wildlife Office (NCVFWO) in Red Bluff, CA and a project being conducted by the Sacramento/San Joaquin Estuary Fishery Resource Office (SSJFRO) in Stockton, CA. The five projects being conducted by NCVFWO are: A census of juvenile salmonid downstream migration, the radio-tracking of spawning adults, the entrainment of juveniles at the Red Bluff Diversion Dam downstream migrant fish protection facilities, egg incubation temperature tolerance studies, and run differentiation using fish ladder counts. The project being conducted by SSJFRO is aimed at updating the knowledge of the factors influencing young salmon abundance, distribution, and survival in the estuary.

FWS requests a 5-year scientific research/enhancement permit (P45V) for a take of adult and juvenile, listed salmon associated with the propagation and captive broodstock programs at FWS's Coleman National Fish Hatchery. The objective of the propagation program is to supplement the listed, naturally-produced salmon population. Listed adult salmon are proposed to be captured and spawned in a protected hatchery environment to increase the survival of the resultant eggs and juvenile fish. The progeny of the captured adults will then be released into the wild. The purpose of the captive broodstock program is to maintain the genetic integrity of the listed salmon species in a hatchery environment. The objectives of the captive broodstock program are to provide: Protection against loss of genetic material, a source of gametes for the propagation program, a source of progeny to supplement the naturally-produced fish, security until habitat conditions in the Sacramento River improve, egg and fry for experimental purposes, and a potential tool to assist in the recovery of the species.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on either application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: November 15, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28883 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 103095B]

Marine Mammals and Endangered Species; Permits

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

ACTION: Issuance of scientific research permit (P523A).

SUMMARY: Notice is hereby given that Dr. Adam Frankel, Cornell University, Bioacoustic Research Program, 159 Sapsucker Road, Ithaca, NY 14850 has been issued a permit to take (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 offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/955–8831).

SUPPLEMENTARY INFORMATION: On August 8, 1995, a document was published in the Federal Register (60 FR 40346) that a request for a scientific research had been submitted by the above-named individual. The request was to take (harass) several species of marine mammals and sea turtles over a 5-year period, during sound playback studies in the waters off the Kohala coast of Hawaii. 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.*), and the regulations governing endangered species permits (50 CFR parts 217–227).

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 is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 20, 1995.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–28885 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–22–F

Economics and Statistics Administration

2000 Census Advisory Committee; Meeting

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409), we are giving notice of a meeting of the 2000 Census Advisory Committee. The meeting will convene on Thursday, December 7, 1995. at 8:30 a.m. at the Bureau of the Census Conference Center, Room 1630, Federal Building 3, and adjourn on Friday, December 8 at 12 noon.

The Advisory Committee is composed of a Chair, Vice Chair, and twenty-five member organizations, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: On Thursday, December 7, 1995, the meeting will begin at 8:30 a.m. and adjourn for the day at 4:30 p.m. On Friday, December 8, 1995, the meeting will begin at 8:30 a.m. and adjourn at 12 noon.

ADDRESSES: The meeting will take place at the Bureau of the Census, Room 1630, Federal Building 3, The Conference Center, Suitland, Maryland.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Building 3, Washington, D.C. 20233, telephone: (301) 457–2308.

SUPPLEMENTARY INFORMATION: A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Brenda Williams on (301) 457–2308.

Dated: November 20, 1995.

Everett M. Ehrlich,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 95–28886 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–EA–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 27, 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 June 30, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 FR 34235) of proposed addition to the Procurement List.

Comments were received from the current contractor for this service challenging the fair market price established for the service, the capability of the designated nonprofit agency to perform the service, and the impact on the current contractor. The contractor also questioned the amount of time it took for the final materials supporting the proposed addition to the Procurement List to be provided to the Committee.

The contractor questioned the fair market price established for this service because it is nearly 60 percent above the price which the contractor claimed to have been paid in its last contract year. The contracting officer informed us, however, that the contractor is being paid somewhat more than it told the Committee, and that the frequency of performance of most tasks to be done in providing the service has been increased substantially from that required of the commenting contractor. The fair market price is within the Committee's guidelines for the work to be performed and has been accepted by the contracting officer.

The contractor's challenge to the capability of the designated nonprofit agency mentioned three factors: the existence of a year-long phase-in of workers with severe disabilities to reach the final ratio of disabled to nondisabled workers; the nonprofit agency's total lack of experience in performing contracts of this type and size; and the length of time it took after the proposal to add this service to the Procurement List was published in the Federal Register for the Committee to receive the information it needed from the central nonprofit agency to satisfy the regulatory requirements of an addition to the Procurement List. The contractor also questioned the lack of detail in the central nonprofit agency's description of how the designated nonprofit agency would perform the tasks required for this service.

The nonprofit agency's plan to take a year to move from its initial ratio of disabled to nondisabled direct labor to the final projected ratio is well within the Committee's procedures for startup of a project of this type. The procedures are intended to guarantee that quality performance is maintained during the longer training period which people with severe disabilities require to perform janitorial functions. The process does not reflect a shortage of workers with severe disabilities as the contractor assumed. The nonprofit agency will offer to retain many of the current workers during this phase-in period, which is consistent with the industry practice of retaining direct

labor employees of a previous contractor.

As the contractor noted, the designated nonprofit agency does not have experience in contracts of this type. However, this is not an unusual situation in the Committee's program, which is intended to create jobs for people with severe disabilities by encouraging the nonprofit agencies which employ these people to engage in new businesses. The central nonprofit agency which is providing technical support to the producing nonprofit agency has extensive experience in assisting similar nonprofit agencies perform such services, and it has demonstrated to the Committee that this addition to the Procurement List has very close parallels with other successful additions. The nonprofit agency intends to employ the contractor's project supervisor to provide knowledge of the work site's requirements, including the hospital grade/aseptic cleaning requirements noted by the commenting contractor, and how to fulfill them.

The Committee does not agree with the contractor's contention that the length of time spent developing the project after its announcement in the Federal Register is an indication the nonprofit agency is incapable of performing the service. The changes in the Statement of Work for the service in July 1995 required a reassessment of the labor needed to perform the service, and revision of the pricing proposal which is the basis of the Committee's establishment of a fair market price. These tasks required more time and negotiations with the contracting officer than was contemplated when the proposed addition was published in the Federal Register.

In contending that addition of this service to the Procurement List would have a severe economic impact on the company, the contractor noted that losing the ability to provide this service to the Government would cause the contractor to abandon two commercial contracts in the same area which its Government contract supports. However, the contractor did not provide information on the value of these contracts. The contractor also noted that its sales have declined substantially in the past year, and it is in a Chapter 11 bankruptcy.

The Committee's information on the contractor's current sales, based on an August 1995 projection by the company, shows that the contract for this service is less than five percent of its total sales. It should also be noted that a Chapter 11 bankruptcy is a reorganization with the intent of continuing the company in business, and in this case appears to have been initiated for technical reasons. Accordingly, the Committee does not agree with the contractor that the proposed addition of the service to the Procurement List threatens the contractor's viability and, thus, does not believe that the addition will have a severe adverse impact on the contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is 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 service to the Government.

2. The action will not have a severe economic impact on the current contractor for the service.

3. The action will result in authorizing small entities to furnish the service 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 service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial Shaw Air Force Base, South Carolina

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. 95–28879 Filed 11–24–95; 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 commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 27, 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 February 10, June 16, August 18, September 22, 29 and October 6, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (60 FR 7945, 31706, 43125, 49263, 50559 and 52388) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pallet, Runner
3990–01–415–6951

Folder, File
7530–00–663–0031

(Requirements for the Stockton, CA depot only)

Paprika, Ground
8950–01–079–6942

Services

Janitorial/Custodial, Centers for Disease Control and Prevention, Atlanta, Georgia
Janitorial/Custodial, Buildings 595 and 472, Kirtland Air Force Base, New Mexico
Janitorial/Custodial, Naval and Marine Corps Reserve Center, Training Building, Portland, Oregon
Janitorial/Custodial, Clarksburg Memorial U.S. Army Reserve Center, Route 19 South, Clarksburg, West Virginia
Janitorial/Custodial, Clarksburg AMSA, 6 Armory Road, Clarksburg, West Virginia
Mailroom Operation, Immigration and Naturalization Service, Administrative Center and Western Operations Region, Laguna Niguel, California
Switchboard Operation, Department of Veterans Affairs Medical Center, Palo Alto, California

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. 95–28880 Filed 11–24–95; 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 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: December 27, 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 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 and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

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 and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Riser, Assembly
1670–01–375–2098
NPA: Cottonwood Incorporated, Lawrence, Kansas
Napkin, Junior Dispenser
8540–01–350–6419
NPA: Royal Maid Association for the Blind, Inc. Hazlehurst, Mississippi

Services

Janitorial/Custodial for the following Anniston, Alabama locations:
Federal Building and U.S. Courthouse, 1129 Noble Street
Social Security Administration, 301 East 13th Street
NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama
Janitorial/Custodial, James A. Haley Veterans Hospital, 13000 Bruce B. Downs Boulevard, Tampa, Florida
NPA: The Harbor Behavioral Health Care Institute New Port Richey, Florida
Operation of Postal Service Center Andrews Air Force Base, Maryland
NPA: Lt. Joseph P. Kennedy Institute Washington, DC

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–28881 Filed 11–24–95; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Information Collection Available for Public Comment (Shipping Rates)

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(e)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

The movement of military members results in over 600,000 shipments of personal property each year. Section 10721 of the Interstate Commerce Act exempts such shipments from ICC rate requirements and allows competitive bidding by carriers. The large volume of shipping contracts has caused the DOD Military Traffic Management Command (MTMC) to process contractor information systematically. By following specific procedures contractors are solicited, bids evaluated, and contractors selected. The legal authority for collection of this information in 37 USC, Section 406.

Title, Applicable Forms, and OMB Control Number: Tender of Service and Letter of Intent for Personal Property, Household Goods and Unaccompanied Baggage Shipments, DD Form 619, OMB Control Number 0702–0022.

Needs and Uses: Since household goods (HHG) move at Government expense, data is needed to choose the best service at least cost and to know when accessorial services are chargeable to the Government. Information serves as a bid for contract to transport HHG. Best-service-for-least-cost carrier receives the contract.

Affected Public: Business or other for profit.

Annual Burden Hours: 1,889,857.
Number of Respondents: 2,404.
Responses Per Respondents: 601.
Average Burden Per Response: 5 minutes.
Frequency: On occasion.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations on the proposed information collection should be sent to HQDA Military Traffic Management Command, 5611 Columbia Pike, ATTN: MTIM–P (MS. SCHUTTER) Falls Church, Virginia 22041–5050. Considerations will be given to all comments received within 60 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Department of the Army Reports Clearance Officer at (703) 614–0454.

Gregory D. Showalter,
Army Federal Register Liaison Officer.

[FR Doc. 95–28809 Filed 11–24–95; 8:45 am]
BILLING CODE 3710–08–M

Proposed Information Collection Available for Public Comment (Transportation Rates)

AGENCY: Director of Information Systems for Command, Control, Communications, and Computers (DISC4), U.S. Army.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(e)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Code of Federal Regulations, Title 49, Section 10721, allows the carrier industry to provide free or reduced rates to the Government for movement of personal property. Department of Defense requires Headquarters, Military Traffic Management Command to analyze and determine the reasonableness of rates for transportation and related services which are submitted voluntary by bid.

Title, Applicable Forms, and OMB Control Number: Uniform Tender of Rates and/or Charges for Domestic Transportation Services (DOD/USCG Sponsored HHG), MT–HQ FORM 43–R, OMB Control Number 0702–0018.

Needs and Uses: DOD-approved household goods carriers file voluntary rates to engage in the movement of DOD and USCG sponsored shipments within CONUS. HQ MTMC evaluates the rates and awards traffic to low rate responsible carriers whose rates are responsive and most advantageous to the Government. The low rate carrier is offered 50% of the traffic at an installation and carriers that meet this rate share in the remaining 50%.

Affected Public: Business or other for profit.

Annual Burden Hours: 2,701.
Number of Respondents: 1,268.
Responses Per Respondents: 4.
Average Burden Per Response: 30 minutes.
Frequency: on occasion.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations on the proposed information collection should be sent to HQDA Military Traffic Management Command, 5611 Columbia Pike, ATTN: MTIM–P (MS. SCHUTTER) Falls Church, Virginia 22041–5050. Considerations will be given to all comments received within 60 days of the date of publication of this notice.

SUPPLEMENTARY INFORMATION: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Department of the Army Reports Clearance Officer at (703) 614–0454.

Gregory D. Showalter,
Army Federal Register Liaison Officer.

[FR Doc. 95–28810 Filed 11–24–94; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0067]

Request for Public Comments Regarding OMB Clearance Entitled Incentive Contracts

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0067).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Incentive Contracts. This OMB clearance currently expires on April 30, 1996.

DATES: *Comment due date:* January 26, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0067, Incentive Contracts, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Incentive contracts are normally used when a firm fixed-priced contract is not appropriate and the required supplies or services can be acquired at lower costs, and sometimes with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.

The information required periodically from the contractor—such as cost of work already performed, estimated costs of further performance necessary to complete all work, total contract price for supplies or services accepted by the Government for which final prices have been established, and estimated costs allocable to supplies or services accepted by the Government and for which final prices have not been established—is needed to negotiate the final prices of incentive-related items and services.

The contracting officer evaluates the information received to determine the contractor's performance in meeting the incentive target and the appropriate price revision, if any, for the items or services.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,000*; Responses per respondent, *1*; total annual responses, *3,000*; preparation hours per response, *1*; and total response burden hours, *3,000*.

Dated: November 9, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–28717 Filed 11–24–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Proposed Middle Rio Grande Flood Protection Project, Bernalillo to Belen, New Mexico, Belen East and West Units

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: 1. *Proposed Action:* The Middle Rio Grande Flood Control Project was authorized by the U.S. Congress with the passage of the Water Resources Development Act of 1986 (Public Law 99–662). The project entails the replacement of existing embankments along both sides of the Rio Grande with structurally competent levees capable of containing high volume, short duration flows up to the design discharge of 42,000 cubic feet per second (cfs), as well as low volume, long duration flows. In the Belen East Unit, levee reconstruction would begin near the New Mexico Highway 147 bridge on Isleta Pueblo and extend southward approximately 22 miles along the east side of the Rio Grande to a point 0.75 miles downstream of the Atchison, Topeka and Santa Fe (AT&SF) Railroad bridge, south of Belen. In the Belen West Unit, on the west side of the Rio Grande, levee rehabilitation would begin south of Isleta Marsh, and extend approximately 19 miles southward to a point 2.2 miles downstream of the AT&SF Railroad bridge. The average height of the reconstructed levee would increase by approximately four feet. Seventy-five acres of wetland creation and 200 acres of riparian woodland restoration have been authorized to mitigate for unavoidable losses of fish and wildlife habitat. An Environmental Impact Statement was completed in 1979, and a General Design Memorandum was completed in 1986.

In 1994, the U.S. Army Corps of Engineers initiated a Limited Reevaluation study for the Belen East and West Units. The purpose of the study is to reaffirm the appropriate plan of flood protection and re-evaluate economic benefits and costs. Since 1979, population and urban development with the project area have increased substantially. Additionally, in light of newly listed endangered and threatened species, and an increased knowledge of riparian and riverine values and functions, potential environmental effects of the proposed project will be re-evaluated in a Supplemental Environmental Impact Statement. Coincident objectives are the preservation and conservation biological, recreational, social, cultural and aesthetic values.

2. *Alternatives Considered:* Alternatives developed and evaluated during previous studies consisted of levee construction (2%-, 1%-, 0.37%-, and 0.16%-chance flood events), flood and sediment control dams, local levees, floodproofing and zoning, partial levee replacement, and no action.

3. *Public Involvement Process*: Coordination is ongoing with both public and private entities having jurisdiction or an interest in land and resources in the middle Rio Grande Valley of New Mexico. These entities include the general public, local governments, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, the New Mexico Department of Game and Fish, the Pueblo of Isleta, and the Interstate Stream Commission. Coordination will continue throughout development of the SEIS through scoping letters, meetings and field visits, and if requested, scoping meetings. All interested parties including Federal, state, tribal, and public entities will be invited to submit comments on the draft SEIS when it is circulated for review.

The planning effort also is being coordinated with the U.S. Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act of 1972 and the Endangered Species Act of 1973, as amended. Consultation with the Advisory Council on Historic Preservation and the New Mexico State Historic Preservation Officer is ongoing pursuant to the National Historic Preservation Act of 1966.

4. *Significant Issues to be Analyzed:* Significant issues to be analyzed in the development of the SEIS include the effect of the recommended plan on endangered or threatened species and their critical habitat; floodplain development; water quality; riparian ecological systems; social welfare; human safety; cultural resources; and aesthetic qualities. Development of mitigation measures will be undertaken for any unavoidable impacts.

5. *Public Review*: The estimated date that the draft Limited Reevaluation Report will be completed and the draft SEIS circulated for public review is December, 1996.

6. *Further Information:* Questions or comments regarding the study and the SEIS may be directed to: Mr. William DeRagon, U.S. Army Corps of Engineers, P.O. Box 1580, Albuquerque, New Mexico 87103–1580; phone (505) 766–3111.

Dated: November 9, 1995.

Lloyd S. Wagner,

Lieutenant Colonel, EN, District Engineer.

[FR Doc. 95–28807 Filed 11–24–95; 8:45 am]

BILLING CODE 3710–KK–M

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Upper Mississippi River—Illinois Waterway System Navigation Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice intent.

SUMMARY: A DEIS will be prepared to address the Upper Mississippi River-Illinois Water System Navigation Study.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Mr. Ken Barr; (309) 794–5349; Commander, U.S. Army Engineer District, Rock Island, ATTN: CENCR–PD–E, Clock Tower Building, P.O. Box 2004, Rock Island, Illinois 610204–2004.

SUPPLEMENTARY INFORMATION: The Upper Mississippi River-Illinois Waterway System Navigation Study is being conducted under the authority of Section 216 of the Flood Control Act of 1970. The 9-foot navigation project is being reviewed for changed physical and economic conditions that may warrant structural or operational modifications to reduce congestion of commercial navigation traffic.

1. During reconnaissance studies, the primary problem identified with the navigation system was lockage delays, especially in the downstream portions of the systems.

2. Navigation improvements to reduce lockage delays identified to date include large- and small-scale measures.

Combinations of these, along with the ''No Action'' alternative, are being evaluated to form an array of alternatives which will eventually result in a recommended plan.

3. Significant issues and concerns identified to date include: system-wide impacts from potential navigation improvements and traffic increases; site-specific impacts from construction; effects on threatened and endangered species; defining and describing the ''future without-project'' condition; secondary effects; cumulative impacts, including the cumulative effects of the operation and maintenance of the existing navigation system; and the future condition and management of the river system.

4. Scoping for the Environmental Impact Statement builds on a knowledge base resulting from the history of navigation on the Upper Mississippi and Illinois Waterway Navigation Systems and includes interagency coordination, interagency meetings, and public meetings. The ''Plan of Study'' which evolved from the 2nd Lock at Lock and Dam 26 (Replacement) project provided a starting point for planning environmental studies. Interagency coordination and a ''Reconnaissance Resolution Conference'' held in December 1992 contributed further to an existing environmental study plan. A ''Public Involvement'' component of the study, and environmental, economic, engineering, and a ''Governor's Liaison'' committees have promoted dialogue and coordination. A study newsletter with a mailing list of approximately 9,500 is mailed out 3 times a year. Public meetings were held in the last quarter of 1993 and 1994, and open houses are scheduled for the last quarter of 1995. Interested Federal, State, and local agencies, Indian tribes, and other interested private organizations and parties are invited to participate.

5. Environmental studies will continue through 1997, followed by analysis and synthesis of data which is anticipated to be provided to the public in a DES in June 1999.

Dated: November 15, 1995.

Charles S. Cox,

Colonel, EN, Commanding.

[FR Doc. 95–28808 Filed 11–24–95; 8:45 am]

BILLING CODE 3710–HV–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 27, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Office, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday, through Friday.

SUPPLEMENTARY INFORMATION: Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 20, 1995.

Gloria Parker,

Director, Information Resources Group

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: Application for the National Assessment of Educational Progress Data Reporting Program.

Frequency; Annually.

Affected Public: Business or other for-profit; Not for Profit institutions; State, Local or Tribal Government.

Reporting and Recordkeeping Burden:

Responses: 15.

Burden Hours: 360.

Abstract: This form will be used by State Educational agencies to apply for funding under the National Assessment of Educational Progress Data Reporting Program. The Department will use the information to make grant awards.

[FR Doc. 95–28859 Filed 11–24–95; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 26, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Department of Education (ED) provide interested Federal agencies and the public an early opportunity to comment on information collection

requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 20, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of the Under Secretary

Type of Review: New.

Title: Evaluation of School-to-Work Implementation.

Frequency: Biennially.

Affected Public: Individual or households; State, Local or Tribal Governments, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 2,770.

Burden Hours: 2,770.

Abstract: the School-to-Work opportunities (STW) Act of 1994 directs the Secretaries of Education and Labor to evaluate progress made by States and local communities in establishing systems to promote effective school-to-work transitions. Information will be collected through surveys of local STW partnerships, case studies and surveys of high school seniors. Data collected will be used in reports to Congress and to others interested in school-to-work programs.

[FR Doc. 95–28860 Filed 11–24–95; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.237]

Office of Special Education and Rehabilitative Services; Program For Children and Youth With Serious Emotional Disturbance

ACTION: Correction notice.

PURPOSE: On August 10, 1995, the Secretary published in the Federal Register (60 FR 40956) a combined application notice (CAN) inviting applications for new awards for fiscal year 1996 under a number of the Department's direct grant and fellowship programs. Included in the CAN was one competition under the Program for Children and Youth with Serious Emotional Disturbance. The purpose of this notice is to correct the project period for that competition. The project period for the Nondiscriminatory, Culturally Competent, Collaborative Demonstration Models to Improve Services for Students with Serious Emotional Disturbance and Prevention Services for Students with Emotional and Behavioral Problems competition, CFDA No. 84.237G, is for up to 36 months.

FOR FURTHER INFORMATION CONTACT: Tom V. Hanley, U.S. Department of Education, 600 Independence Avenue, S.W., room 3526, Switzer Building, Washington, D.C. 20202–2641. Telephone: (202) 205–8110. FAX: (202) 205–8105. Internet:

Tom—Hanley@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Authority: 20 U.S.C. 1426, 34 CFR 328.

Dated: November 20, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–28806 Filed 11–24–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–40–000]

Colorado Interstate Gas Company; Notice of Filing

November 20, 1995.

Take notice that on November 13, 1995, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Fifth Revised Sheet No. 9

CIG states it is adjusting the rates for Rate Schedules FS–1 and IS–1 resulting from the currently effective Average Thermal Content of Gas in Storage (ATC) posted on CIG's electronic bulletin board on October 15, 1995 pursuant to Section 1.2 of the General Terms and Conditions of this tariff. Further, CIG states the combination of the revised ATC and storage rates will not change the current customer storage reservation payments.

CIG states that copies of this filing have been served on CIG affected jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 FR Sections 385.214 and 385.211). All such petitions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28780 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–32–000]

Colorado Interstate Gas Company; Notice of GRI Charge Filing

November 20, 1995.

Take notice that on November 14, 1995, Colorado Interstate Gas Company (CIG) tendered for filing to become part

of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1996:

Fifth Revised Sheet No. 10
Fourteenth Revised Sheet No. 11
First Revised Sheet No. 336
First Revised Sheet No. 337

CIG states that the filing is being made pursuant to Commission Opinion No. 402, issued October 13, 1995, in Docket No. RP95–374–000, reflecting the revised Gas Research Institute (GRI) rates effective as of January 1, 1996.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such petitions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28781 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL87–51–007 and ER88–477–007]

Gulf States Utilities Company; Notice of Filing

November 20, 1995.

Take notice that on November 1, 1995, Gulf States Utilities Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28782 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1101–001]

Kansas City Power & Light Company; Notice of Filing

November 20, 1995.

Take notice that on November 13, 1995, Kansas City Power & Light Company tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 285.214). All such motions or protests should be filed on or before December 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28783 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–41–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERN Gas Tariff

November 20, 1995.

Take notice that on November 13, 1995, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 11
Original Sheet No. 11A
First Revised Sheet No. 13
First Revised Sheet No. 51
First Revised Sheet No. 53
First Revised Sheet No. 88
Second Revised Sheet No. 93
First Revised Sheet No. 118
Second Revised Sheet No. 121
Second Revised Sheet No. 122
First Revised Sheet No. 123
First Revised Sheet No. 420
First Revised Sheet No. 433
First Revised Sheet No. 434
First Revised Sheet No. 435
First Revised Sheet No. 436
First Revised Sheet No. 437
Original Sheet No. 438–439
First Revised Sheet No. 877
First Revised Sheet No. 878

Kern River proposes an effective date of January 1, 1996, but requests suspension of the filing's effective date until March 1, 1996.

Kern River states that the revised tariff sheets make certain minor changes to Kern River's tariff to reflect Kern River's implementation of an interactive transportation services computer system, known as the ''Real-Time Automated Pipeline Integrated Data System,'' or ''RAPIDS II.'' Kern River is also revising the capacity release provisions of its tariff to reduce the notice period required for a Releasing Shipper to recall capacity from a defaulting Replacement Shipper.

Kern River states that copies of the filing were served upon Kern River's jurisdictional customers and all affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell

Secretary.

[FR Doc. 95–28784 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–72–000]

Lee 8 Storage Partnership, Notice of Application

November 20, 1995.

Take notice that on November 15, 1995, Lee 8 Storage Partnership (Lee 8), P.O. Box 729, Monroe, Michigan 48161, filed in Docket No. CP96–72–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) requesting a

blanket certificate of public convenience and necessity authorizing Lee 8 to transport natural gas under Section 284.224 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Lee 8 is a partnership of Howard Energy Co., Inc. (Howard), MG Ventures Storage, Inc. (MG Ventures) and Panhandle Storage Company (Panhandle Storage). It is further stated that Howard is an independent energy production and marketing company, located in Michigan; MG Ventures is a wholly-owned subsidiary of UtiliCorp United Inc., an electric and gas utility and energy marketing company, also located in Michigan; and that Panhandle Storage is an affiliate of Panhandle Eastern Pipe Line Company, an interstate natural gas pipeline.

It is asserted that Lee 8 owns and operates a natural gas storage facility located in Lee Township, Calhoun County, Michigan. It is explained that the facilities consist of a gas storage reservoir, gas processing and metering equipment, 2 1,200 horsepower compressors and 12.5 miles of pipeline connecting Lee 8's facilities to Panhandle Eastern's interstate pipeline. It is further asserted that Lee 8 will connect its facilities to the system of Michigan Gas Utilities (MGU), a local distribution company affiliated with MG Ventures.

Lee 8 asserts that it is a Hinshaw pipeline within the meaning of the NGA and qualified for an exemption from Commission regulation under Section 1(c) of the NGA. It is explained that Lee 8 is engaged in interstate commerce for the purpose of providing flexible and competitive storage services for consumers in Michigan. It is further explained that all of Lee 8's facilities are located within the state of Michigan and that Lee 8 receives all of its gas within or at the boundaries of the state of Michigan, and the gas is consumed within the state of Michigan. It is asserted that Lee 8 is subject to regulation by the Michigan Public Service Commission (MPSC), with gas transactions regulated as to rates, terms and conditions of service.

Lee 8 states that it will use its rates and tariffs on file with the MPSC for the services rendered under the blanket certificate requested in the subject application. Lee 8 further states that it will comply with all applicable conditions contained in paragraph (e) of § 284.224 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 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 Rule.

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 Lee 8 to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28785 Filed 11–24–95;8:45am]

BILLING CODE 6717–01–M

[Docket No. CP96–65–000]

Natural Gas Pipeline Company of America; Notice of Application

November 20, 1995.

Take notice that on November 13, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP96–65–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, for permission to abandon a firm natural gas transportation service for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it proposes to abandon a firm transportation service authorized in Docket No. CP85–308–000 and performed under Natural's Rate Schedule X–140. Natural further states that under the arrangement, Texas Gas made available up to 60,000 MMBtu of natural gas per day to Natural on a firm basis (plus interruptible overrun volumes) in High Island Block A–489, offshore, Texas which Texas Gas purchased in High Island Block A–462, offshore, Texas.[1] Natural indicates it would redeliver such gas in High Island Block A–498,[2] offshore, Texas to High Island Offshore System for further transportation.

Natural states that by a letter agreement dated September 1, 1995, Natural and Texas Gas agreed to terminate the agreement and Natural's Rate Schedule X–140 effective January 1, 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 5, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

[1] Texas Gas owns an offshore line running from High Island Block A–462 to High Island Block A–489, both offshore Texas.

[2] Natural would redeliver such gas by utilizing its capacity in a jointly-owned line which Natural owns with Koch Gateway Pipeline Company, ANR Pipeline Company and Transcontinental Gas Pipe Line Corporation constructed in Docket No. CP79–327.

Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28786 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–31–000]

New England Power Company; Notice of Filing

November 20, 1995.

Take notice that on November 15, 1995, New England Power Company tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28787 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–60–000]

Northwest Pipeline Corporation; Notice of Application

November 20, 1995.

Take notice that on November 13, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an ownership interest in certain of it facilities by sale to Transwestern Pipeline Company (Transwestern), certain related transportation agreements and operation of the facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to (1) abandon, by sale to Transwestern, an undivided 77.7 percent ownership interest in Northwest's existing and planned facilities extending from the outlet of its La Plata ''B'' compressor near Ignacio, Colorado southward to the jointly owned Blanco Hub near Bloomfield, New Mexico (La Plata Facilities); (2) abandon, by assignment of the underlying agreements to Transwestern, existing firm transportation between receipts point on the La Plata Facilities, which has been authorized under Northwest's blanket certificate; and (3) abandon its certificated operation of the La Plata Facilities and two third-party meter stations connected to the La Plata Facilities, in favor of Transwestern assuming such operation.

Northwest states that its exiting La Plata Facilities include the La Plata ''A'' Compressor Station near Ignacio, approximately 33 miles of 30-inch pipeline from that station to the Blanco hub and various receipt or delivery facilities at third-party interconnections with the La Plata pipeline. It is stated that the planned additions to the La Plata Facilities, which will be installed under Northwest's blanket certificate authority as a necessary precursor to the proposed abandonment, include a new meter station between Northwest's La Plata ''B'' compressor outlet and La Plata ''A'' compressor inlet and a new meter station, with approximately 600 feet of 24-inch piping, from the Williams Gas processing Company Ignacio Plant to the La Plata ''A'' compressor inlet.

It is stated that pursuant to a Purchase and Sale Agreement dated November 3, 1995, Transwestern will acquire the proposed 77.7 percent ownership interest in the La Plata Facilities at a price equal to 77.7 percent of the net book value on the closing date. If the closing were to occur at year end 1996, Northwest contends that the total net book value of the La Plata Facilities, including the planned facility additions, is projected to be approximately $25.6 million, resulting in a purchase price of about $19.9 million.

Northwest states that the 22.3 percent ownership in the La Plata Facilities to be retained by Northwest will provide 212,788 Dth per day of north flow capacity from various La Plata Facility receipt points to Northwest's wholly-owned mainline, plus 23,811 Dth per day of south flow capacity from Northwest's mainline to a La Plata Facility delivery point. Northwest contends that these retained capacities are the quantities required for Northwest to continue accommodating existing long-term firm contract obligations to provide transportation to and from the La Plata Facilities.

It is stated that Northwest will operate the La Plata Facilities pursuant to the terms and conditions of an Ownership and Operating Agreement dated November 3, 1995. Northwest and Transwestern will share the operating expenses of the La Plata Facilities and will each treat its respective ownership interest in the La Plata Facilities as an integral part of its own pipeline system, with transportation transactions thereon subject to the applicable owner's open-access transportation tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 11, 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 Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28788 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–71–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 20, 1995.

Take notice that on November 15, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP96–71–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a new delivery point to permit delivery of gas to Channel Industries Gas Company (Channel) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to establish a new delivery point on Tennessee's system, within the station yard of Channel's existing compressor station No. 402–C, in Brooks County, Texas. Tennessee will install, own, operate and maintain a tap assembly and electronic gas measurement equipment (EGM) at approximate M.P. 403.1+.09. In addition, Tennessee will install, complete with appurtenances, either a 16-inch mainline valve or an actuator on existing Mainline Value 403-1. Channel will own and maintain the measurement and regulation facilities, and will install, own, operate and maintain the tie-in assembly and interconnecting pipe, as integral parts of its existing intrastate pipeline facilities. Tennessee will install and operate the measurement and regulation facilities. Tennessee will be fully reimbursed by Channel for the facilities Tennessee installs.

Tennessee states that the purpose of this delivery point is to establish an interconnection between its system and that of Channel. At this point, Tennessee will deliver gas to Channel for redelivery to Mobile Gas Services Inc. (Mobil) for processing at Mobil's LaGloria Gas Processing Plant (La Gloria) in Brooks County, Texas. Tennessee's deliveries will be made under Tennessee's Part 284 blanket transportation certificate. Channel will transport the gas from the proposed interconnection with Tennessee to LaGloria pursuant to Section 311(a)(2) of the the Natural Gas Policy Act of 1978 (NGPA) and Subpart C of Part 284 of the Commission's Regulations. Tennessee states that no facilities modifications are required to allow gas processed at LaGloria to be returned to Tennessee's system; such a connection is already in place.

Tennessee states that the total quantities to be delivered to Channel after the delivery point is installed will not exceed the total quantities authorized prior to this request. Tennessee asserts that the establishment of the proposed delivery point is not prohibited by Tennessee's tariff and that it has sufficient capacity to accomplish deliveries at the proposed new point without detriment or disadvantage to any of Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 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. 95–28789 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1386–000]

Wisconsin Public Service Corporation; Notice of Filing

November 20, 1995.

Take notice that on October 23, 1995, Wisconsin Public Service Corporation tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 5, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28790 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

Monroe City Corporation; Notice of Intent To Prepare an Environmental Assessment and Notice of solicitation of Written Scoping Comments

[Project No. 1517–008]

November 20, 1995.

The Federal Energy Regulatory Commission (Commission) has received an application from the Monroe City Corporation (Monroe City) to relicense the Upper Monroe Hydroelectric Project No. 1517–008. The 250-kilowatt project is located partially within Fishlake National Forest, on Shingle Creek, Serviceberry Creek, the First Lefthand Fork of the Monroe Creek, and Monroe Creek, near the town of Monroe City, in Sevier County, Utah.

The original license for this project was issued to Monroe City on May 31, 1939, and expired on June 30, 1990. they have been operating on a series of annual licenses since that date.

The Commission staff intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act.

In the EA, we will consider reasonable alternatives to the project as proposed by Monroe City, analyze both site-specific and cumulative environmental impacts of the project as well as economic and engineering impacts.

The draft EA will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

Scopinig

We are asking agencies, Indian tribes, special interest groups, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us

with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the environmental coordinator, whose number is listed below.

Those with comments or information pertaining to this project should file it with the Commission at the following address: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426

The comments and information are due to the Commission within 60 days from the issuance date of the scoping document. All filings should clearly show the following on the first page: Upper Monroe Hydroelectric Project, FERC No. 1517–008.

Intervenors are reminded of the Commission's Rules of Practice and Procedure which require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any questions regarding this notice may be directed to Michael Strzelecki, environmental coordinator, at (202) 219–2827.

Lois D. Cahsell,

Secretary.

[FR Doc. 95–28779 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM95–3–000 and Docket No. RM95–4–000]

Notice of Change in Date of Informal Technical Conference

November 20, 1995.

In the matter of Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs; and Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies.

Take notice that the date for the technical conference to be convened pursuant to the orders issued in Docket Nos. RM95–3–000 and RM95–4–000 has been changed to *Friday, December 5, 1995.*[1]

The date has been moved to assure the largest possible attendance. Many participants from the industry, as well as Commission staff, had scheduling conflicts on the previous date.

The conference will begin at 9:00 a.m., on Friday, December 1, 1995, in a Hearing Room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. All interested persons are invited to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28778 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–50–000, et al.]

NorAm Gas Transmission Company et al.; Natural Gas Certificate Filings

November 15, 1995.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP96–50–000]

Take notice that on November 6, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP96–50–000 pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for permission to abandon five inactive taps, authorized in blanket certificates issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request on file with the Commission and open to public inspection.

NGT proposes to abandon five inactive 1-inch domestic taps on their Line R in Caddo Parish, Louisiana. NGT installed these taps in the early 1950's to deliver gas to customers served by Arkla, a division of NorAm Energy Corporation (Arkla). Arkla notified NGT in writing that these taps are no longer active and is in agreement to their abandonment. NGT states that the cost of the facilities proposed to be abandoned would be $5,009.00. NGT further states that the taps would be removed and capped.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP96–51–000]

Take notice that on November 7, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP96–51–000 a request pursuant to Sections 157.205 and 157.211 of the Commissions' Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to continue the present operation of a previously installed tap in Ramsey County, North Dakota under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 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.

Williston Basin proposes to commence receipt of natural gas through the subject tap pursuant to a request by Montana-Dakota Utilities Company for up to 250 Mcf per day for the Noodles By Leonardo plant near Devils Lake, North Dakota. Williston Basin states that it would provide for the deliveries under its Rate Schedules FT–1 and/or IT–1. Williston Basin further states that the continued operation of the subject tap would have no significant effect on its peak day or annual requirements and that the volumes proposed to be delivered would be within the contractual entitlements of the customer.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP96–54–000]

Take notice that on November 8, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP96–54–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon Natural's interruptible transportation service for Enron Industrial Natural Gas Company (Enron Industrial) performed under Natural's Rate Schedule X–139, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that pursuant to a gas transportation agreement between Natural and Enron Industrial, formerly

[1] Filing and Reporting Requirements for Interstate Natural Gas Companies Rate Schedules and Tariffs, Order No. 582, 60 FR 52960 (October 11, 1995), 72 FERC ¶ 61,300 (1995); and, Revisions to Uniform System of Accounts Forms, Statements, and Reporting Requirements for Natural Gas Companies, Order No. 581, 60 FR 53019 (October 11, 1995), 72 FERC ¶ 61,601 (1995). The notice setting this conference for November 30, 1995, was issued November 6, 1995 (60 FR 56997, November 13, 1995).

Industrial Natural Gas Company and HNG Industrial Natural Gas Company, it had received for the account of Enron Industrial up to 150,000 MMBtu of natural gas per day on an interruptible basis from Transok, Inc. in Bryan County, Oklahoma and redelivered such gas to Houston Pipe Line Company in Lamar County, Texas.

Natural states further that the gas transportation agreement expired by its own terms on June 1, 1995 and that by a letter agreement dated September 13, 1995, Natural and Enron Industrial agreed to terminate the gas transportation agreement effective June 1, 1995. Natural, it is said is therefore requesting authorization to abandon the transportation service.

Comment date: December 6, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP96–61–000]

Take notice that on November 13, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP96–61–000 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 facilities necessary to establish thirteen additional points of delivery to existing customers for firm transportation service under Columbia's blanket certificate issued in Docket No. CP83–76–000 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.

Columbia proposes to construct and operate the necessary facilities to establish thirteen new points of delivery for firm transportation services under Part 284 of the Commission's regulations. Columbia would provide the services pursuant its blanket certificate issued in Docket No. CP86–240–000 under existing authorized Rate Schedules and within certificated entitlements, as follows:

Customer	No. of end users		Estimated design day quantity	Estimated annual quantity
	Residential	Commercial	(Dth/d)	(Dth)
Columbia Gas of Kentucky, Inc	1	.....	1.5	150
Columbia Gas of Ohio, Inc	2	.....	3	300
Moutaineer Gas Company, West Virgina	9	1	19.5	1,950

Columbia states that the quantities proposed to be provided through the new delivery points would be within Columbia's authorized level of services. Columbia estimates that the cost to install the new taps would be approximately $150 per tap and would be treated as an Operation and Maintenance Expense. Columbia further states that for each of the thirteen delivery points the customer would install a meter within Columbia's existing right-of-way to provide service to the end user.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

5. Koch Gateway Pipeline Company

[Docket No. CP96–63–000]

Take notice that on November 13, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP96–63–000 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 operate as a jurisdictional facility, a two-inch delivery tap placed in service under Section 311(a) of the Natural Gas Policy Act (NGPA) and Section 284.3(c), under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 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.

Koch Gateway states that the facilities are located in Washington Parish, Louisiana on Koch Gateway's four-inch Franklinton line designated as Index 301–04–02 and were constructed to provide service to TEC Minerals on behalf of Entex, Inc. (Entex), a local distribution company. Koch Gateway states that certification of these facilities will provide Entex with the additional flexibility of being able to use these facilities as a delivery point on Entex's blanket transportation agreements with Koch Gateway. Koch Gateway states that Entex reimbursed Koch Gateway for the total cost of the tap, estimated to be approximately $8,254.

Koch Gateway states that it currently provides interruptible Section 311 transportation service to Entex as reported in FERC Docket No. ST89–2309. Koch Gateway states that once these facilities are certificated, Koch Gateway will also provide transportation services pursuant to Koch Gateway's blanket transportation certificate (FERC Docket No. CP88–6–000). Koch Gateway states that Entex proposes to add this delivery point to its existing firm transportation agreement with Koch Gateway which was filed with the Commission as Docket No. ST95–1843 and provides for an estimated maximum daily quantity of 105,000 MMBtu. Koch Gateway states that Entex estimates that its peak day requirement at this point will be 1,500 MMBtu, and states that the volume delivered to this point under the firm agreement will be within the certificated entitlement of that existing service.

Koch Gateway further states that it will operate the facilities in compliance with 18 CFR, Part 157, Subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the

appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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 therefore, 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. 95–28635 Filed 11–24–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–95–06]

Qualified Bidders and Bidding Instructions for November 13, 1995 MDS Auction

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: This Public Notice, released November 7, 1995, announced the qualified bidders for the upcoming MDS auction scheduled to begin November 13, 1995, and provided additional bidding instructions. The Public Notice also included a list of the unqualified bidders. This Public Notice is directed toward the Commission's goal of efficiently distributing the unused MDS spectrum through competitive bidding, and is designed to assist prospective bidders in preparing for the upcoming MDS auction.

FOR FURTHER INFORMATION CONTACT: Stacey Reuben-Mesa at (202) 418–0654, John Spencer at (202) 418–0660 or Sharon Bertlesen at (202) 416–0892.

The complete text of the Public Notice dated November 7, 1995 follows. Copies of this item are available for public inspection in Room 207, 2033 M Street, N.W., Washington, D.C. and may also be obtained from the FCC copy contractor, ITS, Inc. at (202) 418–0620, and the FCC auction contractor, Tradewinds International, Inc. at (202) 637–FCC1 (637–3221).

Report No. AUC–95–06, Auction No. 6

November 7, 1995.

This Public Notice identifies applicants who have been found qualified to bid in the auction for 493 authorizations in the single channel and Multichannel Multipoint Distribution Service (collectively MDS), scheduled to begin November 13, 1995. This Notice also provides bidding instructions and other important information regarding the auction.

Qualified Bidders

Each entity listed on Attachment A has filed a timely short-form application to participate in the auction (FCC Form 175–M) that has been accepted for filing, and has timely submitted an amount sufficient to qualify it to bid on at least one authorization for which it has applied. (A small number of applicants did not submit their payments by cashier's check or wire transfer; for this auction only we are treating these as qualified bidders conditioned on the immediate collection of funds.) Each entity listed on Attachment B has been found not qualified to bid in this auction.

In order to participate effectively in the auction, qualified bidders should refamiliarize themselves with the auction rules and other information contained in the MDS Bidder Information Package, particularly pages 35–47 and 60–62. The following information provides additional guidance.

Registration

Qualified bidders have been automatically registered for the auction. For security reason, the Commission will confirm registration by two separate mailings of registration materials, both sent to the contact person at the address identified in the applicant's FCC Form 175–M. The two mailings will include the bidder's identification number, login code, login password and the telephone number for telephonic bidding. By Thursday, November 9, 1995, each bidder should be in possession of the following information:

- FCC account number (self-assigned on the FCC Form 175–M, and listed on Attachment A).
- Bidder identification number (supplied by FCC mailing).
- Login code (supplied by FCC mailing).
- Login password (supplied by FCC mailing).
- Telephone numbers for bidding (supplied by FCC mailing).

Any applicant listed as a qualified bidder in Attachment A to this Public Notice, who has not received both registration mailings by Thursday, November 9, 1995, should contact the FCC's auction contractor, Tradewinds International, Inc., at (202) 637–3221. It is each applicant's responsibility to ensure that all registration information has been received.

Lost login codes, login passwords and bidder identification numbers can be replaced only at the FCC Auction Headquarters, located at 2 Massachusetts Avenue NE., Washington, D.C. 20002. If a replacement is necessary, either an authorized representative or the certifying official (as designated on the applicant's FCC Form 175–M) must appear in person with two forms of identification, one of which must be a photo identification.

Electronic Bidding

Each qualified bidder that wishes to bid electronically must purchase electronic bidding software. Bidders may duplicate the software for backup or for use by authorized representatives

at different locations (though not concurrently). However, the FCC Remote Bidding System will not accept electronic bids from qualified bidders who are not registered purchasers of the bidding software.

The FCC Remote Bidding System requires access to a 900 telephone line. Bidders should verify in advance that the telephone systems they will be using to submit electronic bids permit access to 900 telephone numbers, and should consult their telephone administrators if they need assistance.

Bidding Schedule

One round of bidding will be conducted on each of the first two days of the auction. The schedule for Monday, November 13, and Tuesday, November 14, 1995 will be as follows:

10:00 a.m.–2:00 p.m. EST—Bid Submission Period
2:00 p.m.–2:30 p.m. EST—Submission Round Results
2:30 p.m.–3:00 p.m. EST—Bid Withdrawal Period
3:00 p.m.–3:30 p.m. EST—Withdrawal Round Results

Two rounds of bidding will be conducted on each of the third through the fifth days of the auction. The schedule for Wednesday, November 15, Thursday, November 16, and Friday, November 17, 1995, will be as follows:

9:00 a.m.–11:00 a.m. EST—Bid Submission Period
11:00 a.m.–11:30 a.m. EST—Submission Round Results
11:30 a.m.–12:00 noon EST—Bid Withdrawal Period
12:00 noon–12:30 p.m. EST—Withdrawal Round Results
2:00 a.m.–4:00 p.m. EST—Bid Submission Period
4:00 p.m.–4:30 p.m. EST—Submission Round Results
4:30 p.m.–5:00 p.m. EST—Bid Withdrawal Period
5:00 p.m.–5:30 p.m. EST—Withdrawal Round Results

The FCC will set the pace of the auction based upon its monitoring of the bidding and its assessment of the auction's progress. Generally, at the end of each week of the auction, the FCC will announce the bidding schedule for the following week.

Auction Stages

The FCC will also give ample notice of stage transitions. Stage transitions increase the minimum required activity levels (from 50 to 80 percent, and from 80 to 95 percent of total eligibility). Bidders who are inattentive to these stage transitions may inadvertently lose either activity rule waivers or, if waivers are exhausted, bidding units (also known as ''activity units'').

Attachment A

Messages and Announcements

The FCC will post pertinent auction information as messages and announcements on the FCC Remote Bidding System, on its Internet site and on its Bulletin Board System (BBS). Bidders should read this information carefully.

Bidder Questions During the Auction

FCC auction officials, technical support staff and others will be available during the course of the auction to answer questions from bidders. Help can be obtained through the following telephone numbers:

- FCC Bidder Line—Use telephone bid number supplied in registration mailing.
- FCC Technical Support Hotline (202) 414–1260.

News Media contact: Stacey Reuben-Mesa at (202) 418–0654
FCC Auctions contact: John Spencer at (202) 418–0660
Mass Media contact: Sharon Bertelsen at (202) 416–0892

Federal Communications Commission.
William F. Caton,
Acting Secretary.

FCC Multipoint Distribution Srvc Auction

Qualified Bidders–Public Notice

Auction ID: 6

(Sorted by Applicant)
Date of Report: 11/7/95.

The following Applicants have been found 'Qualified':

FCC account No.	Name
0943221309	Alaska Wireless Cable, Inc. The following License(s): B136–
8034488125	Albert D. Ervin. The following License(s): B147– B312– B436–
5127081514	Allen Leeds. The following License(s):

FCC account No.	Name
	B001– B002– B003– B004– B005– B006– B007– B008– B009– B010– B011– B012– B013– B014– B015– B016– B017– B018– B019– B020– B021– B022– B023– B024– B025– B026– B027– B028– B029– B030– B031– B032– B033– B034– B035– B036– B037– B038– B039– B040– B041– B042– B043– B044– B045– B046– B047– B048– B049– B050– B051– B052– B053– B054– B055– B056– B057– B058– B059– B060– B061– B062– B063– B064– B065– B066– B067– B068– B069– B070– B071– B072– B073– B074– B075– B076– B077– B078– B079– B080– B081– B082– B083– B084– B085– B086– B087– B088– B089– B089– B090– B091– B092– B093– B094– B095– B096– B097– B098– B099– B100– B101– B102– B103– B104– B105– B106– B107– B108– B109– B110– B111– B112– B113– B114– B115– B116– B117– B118– B119– B120– B121– B122– B123– B124– B125– B126– B127– B128– B129– B130– B131– B132– B133– B134– B135– B136– B137– B138– B139– B140– B141– B142– B143– B144– B145– B146– B147– B148– B149– B150– B151– B152– B153– B154– B155– B156– B157– B158– B159– B160– B161– B162– B163– B164– B165– B166– B167– B168– B169– B170– B171– B172– B173– B174– B175– B176– B177– B178– B179– B180– B181– B182– B183– B184– B185– B186– B187– B188– B189– B190– B191– B192– B193– B194– B195– B196– B197– B198– B199– B200– B201– B202– B203– B204– B205– B206– B207– B208– B209– B210– B211– B212– B213– B214– B215– B216– B217– B218– B219– B220– B221– B222– B223– B224– B225– B226– B227– B228– B229– B230– B231– B232– B233– B234– B235– B236– B237– B238– B239– B240– B241– B242– B243– B244– B245– B246– B247– B248– B249– B250– B251– B252– B253– B254– B255– B256– B257– B258– B259– B260– B261– B262– B263– B264– B265– B266– B267– B268– B269– B270– B271– B272– B273– B274– B275– B276– B277– B278– B279– B280– B281– B282– B283– B284– B285– B286– B287– B288– B289– B290– B291– B292– B293– B294– B295– B296– B297– B298– B299– B300– B301– B302– B303– B304– B305– B306– B307– B308– B309– B310– B311– B312– B313– B314– B315– B316– B317– B318– B319– B320– B321– B322– B323– B324– B325– B326– B327– B328– B329– B330– B331– B332– B333– B334– B335– B336– B337– B338– B339– B340– B341– B342– B343– B344– B345– B346– B347– B348– B349– B350– B351– B352– B353– B354– B355– B356– B357– B358– B359– B360– B361– B362– B363– B364– B365– B366– B367– B368– B369– B370– B371– B372– B373– B374– B375– B376– B377– B378– B379– B380– B381– B382– B383– B384– B385– B386– B387– B388– B389– B390– B391– B392– B393– B394– B395– B396– B397– B398– B399– B400– B401– B402– B403– B404– B405– B406– B407– B408– B409– B410– B411– B412– B413– B414– B415– B416– B417– B418– B419– B420– B421– B422– B423– B424– B425– B426– B427– B428– B429– B430– B431– B432– B433– B434– B435– B436– B437– B438– B439– B440– B441– B442– B443– B444– B445– B446– B447– B448– B449– B450– B451– B452– B453– B454– B455– B457– B458– B459– B460– B461– B462– B463– B464– B465– B466– B467– B468– B469– B470– B471– B472– B473– B474– B475– B476– B477– B478– B479– B480– B481– B482– B483– B484– B485– B486– B487– B488– B489– B490– B491– B492– B493–
0650415345	Allied Properties, Inc. The following License(s): ALL.
0841265444	American Telecasting Development, Inc. The following License(s): ALL.
0411616965	American Wireless Systems, Inc. The following License(s): B024– B101– B262– B290– B298– B320– B419–
0870480126	American Wireless, Inc. The following License(s): B392–
3178798851	Andrew V. Saban. The following License(s): B457–
0541698157	Applied Video Technologies, Inc. The following License(s):

FCC account No.	Name
	B001– B002– B003– B004– B005– B006– B007– B008– B009– B010– B011– B012– B013– B014– B015– B016– B017– B018– B019– B020– B021– B022– B023– B024– B025– B026– B027– B028– B029– B030– B031– B032– B033– B034– B035– B036– B037– B038– B039– B040– B041– B042– B043– B044– B045– B046– B047– B048– B049– B050– B051– B052– B053– B054– B055– B056– B057– B058– B059– B060– B061– B062– B063– B064– B065– B066– B067– B068– B069– B070– B071– B072– B073– B074– B075– B076– B077– B078– B079– B080– B081– B082– B083– B084– B085– B086– B087– B088– B089– B090– B091– B093– B094– B095– B096– B097– B098– B099– B100– B101– B102– B103– B105– B106– B107– B108– B109– B110– B111– B112– B113– B114– B115– B116– B117– B118– B119– B120– B121– B122– B123– B124– B125– B126– B127– B128– B129– B130– B131– B132– B133– B134– B135– B136– B137– B138– B139– B140– B141– B142– B143– B144– B145– B146– B147– B148– B149– B150– B151– B152– B153– B154– B155– B157– B158– B159– B161– B162– B163– B164– B165– B166– B167– B168– B169– B170– B171– B172– B173– B174– B175– B176– B177– B178– B179– B180– B181– B182– B184– B185– B186– B187– B188– B189– B190– B191– B192– B193– B194– B195– B196– B197– B198– B199– B200– B201– B202– B203– B204– B205– B206– B207– B208– B209– B210– B211– B212– B213– B214– B215– B216– B217– B218– B219– B220– B221– B222– B223– B224– B225– B226– B227– B228– B229– B230– B231– B232– B233– B234– B235– B236– B238– B239– B240– B241– B242– B243– B244– B245– B246– B247– B248– B249– B250– B351– B252– B253– B254– B255– B256– B257– B258– B259– B260– B261– B262– B263– B264– B265– B267– B268– B269– B270– B271– B272– B273– B274– B275– B276– B277– B278– B279– B280– B281– B282– B283– B285– B286– B287– B288– B289– B290– B291– B292– B293– B294– B295– B296– B297– B298– B299– B300– B301– B302– B303– B304– B305– B306– B307– B308– B309– B310– B311– B312– B313– B314– B315– B316– B317– B318– B319– B320– B321– B322– B323– B325– B326– B327– B328– B329– B330– B331– B332– B333– B335– B336– B337– B338– B339– B340– B341– B342– B343– B344– B345– B346– B347– B348– B349– B350– B351– B352– B353– B354– B355– B356– B357– B358– B359– B360– B361– B362– B363– B364– B365– B366– B367– B368– B369– B370– B371– B372– B373– B375– B377– B378– B379– B380– B381– B382– B383– B385– B386– B387– B388– B389– B390– B391– B392– B393– B394– B395– B396– B397– B398– B399– B400– B401– B402– B403– B404– B405– B406– B407– B408– B409– B410– B411– B412– B413– B414– B415– B416– B417– B418– B419– B420– B421– B422– B423– B424– B425– B426– B427– B428– B429– B431– B432– B433– B434– B435– B436– B437– B438– B439– B440– B441– B442– B443– B444– B445– B446– B447– B448– B449– B450– B451– B452– B453– B454– B455– B456– B457– B458– B459– B460– B462– B463– B464– B465– B466– B467– B468– B469– B470– B471– B472– B473– B474– B475– B476– B477– B478– B479– B480– B481– B482– B483– B484– B485– B486– B487– B488– B489– B490– B491– B492– B493–
4076473952	
	Arch Family Limited Partnership, James Arch, MGP.
	The following License(s):
	ALL.
0860795126	Arizona Calling, L.L.C.
	The following License(s):
	ALL.
0631132158	BarTel. Inc.
	The following License(s):
	B017– B044– B158– B415– B450–
6034326329	Baton Rouge Wireless Communications, Inc.
	The following License(s):
	B032–
8013285618	BayArea, Inc.
	The following License(s):
	B107– B151– B152– B159– B212– B239– B289– B293– B313– B326– B336– B340– B408– B439– B440– B469–
2052323835	Beasley Communications, Inc.
	The following License(s):
	ALL.
0954459481	Beaumont Broadcasting Company.
	The following License(s):
	B034–
6159667410	Better Choice TV, Inc.
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	B001– B002– B003– B004– B005– B006– B007– B008– B009– B010– B011– B012– B013– B014– B015– B016– B017– B018– B019– B020– B021– B022– B023– B024– B025– B026– B027– B028– B029– B030– B031– B032– B033– B034– B035– B036– B037– B038– B039– B040– B041– B042– B043– B044– B045– B046– B047– B048– B049– B050– B051– B052– B053– B054– B055– B056– B057– B058– B059– B060– B061– B062– B063– B064– B065– B066– B067– B068– B069– B070– B071– B072– B073– B074– B075– B076– B077– B078– B079– B080– B081– B082– B083– B084– B085– B086– B087– B088– B089– B090– B091– B092– B093– B094– B095– B096– B097– B098– B099– B100– B101– B102– B103– B104– B105– B106– B107– B108– B109– B110– B111– B112– B113– B114– B115– B116– B117– B118– B119– B120– B121– B122– B123– B124– B125– B126– B127– B128– B129– B130– B131– B132– B133– B134– B135– B136– B137– B138– B139– B140– B141– B142– B143– B144– B145– B146– B147– B148– B149– B150– B151– B152– B153– B154– B155– B156– B157– B158– B159– B160– B161– B162– B163– B164– B165– B166– B167– B168– B169– B170– B171– B172– B173– B174– B175– B176– B177– B178– B179– B180– B181– B182– B183– B184– B185– B186– B187– B188– B189– B190– B191– B192– B193– B194– B195– B196– B197– B198– B199– B200– B201– B202– B203– B204– B205– B206– B207– B208– B209– B210– B211– B212– B213– B214– B215– B216– B217– B218– B219– B220– B221– B222– B223– B224– B225– B226– B227– B228– B229– B230– B231– B232– B233– B234– B235– B236– B237– B238– B239– B240– B241– B242– B243– B244– B245– B246– B247– B248– B249– B250– B251– B252– B253– B254– B255– B256– B257– B258– B259– B260– B261– B262– B263– B264– B265– B266– B267– B268– B269– B270– B271– B272– B273– B274– B275– B276– B277– B278– B279– B280– B281– B282– B283– B284– B285– B286– B287– B288– B289– B290– B291– B292– B293– B294– B295– B296– B297– B298– B299– B300– B301– B302– B303– B304– B305– B306– B307– B308– B309– B310– B311– B312– B313– B314– B315– B316– B317– B318– B319– B320– B321– B322– B323– B324– B325– B326– B327– B328– B329– B330– B331– B332– B333– B334– B335– B336– B337– B338– B339– B340– B341– B342– B343– B344– B345– B346– B347– B348– B349– B350– B351– B352– B353– B354– B355– B356– B357– B358– B359– B360– B361– B362– B363– B364– B365– B366– B367– B368– B369– B370– B371– B372– B373– B374– B375– B376– B377– B378– B379– B380– B381– B382– B383– B384– B385– B386– B387– B388– B389– B390– B391– B392– B393– B394– B395– B396– B397– B398– B399– B400– B401– B402– B403– B404– B405– B406– B407– B408– B409– B410– B411– B412– B413– B414– B415– B416– B417– B418– B419– B420– B421– B422– B423– B424– B425– B426– B427– B428– B429– B430– B431– B432– B433– B435– B436– B437– B438– B439– B440– B441– B442– B443– B444– B445– B446– B447– B448– B449– B450– B451– B452– B453– B454– B455– B456– B457– B458– B459– B460– B461– B462– B463– B464– B465– B466– B467– B468– B469– B470– B471– B472– B473– B474– B475– B476– B477– B478– B479– B480– B481– B482– B483– B484– B485– B486– B487– B488– B489– B490– B491– B492– B493–
8015326060	Transworld Holdings, Inc. The following License(s): B016– B020– B036– B055– B072– B074– B079– B091– B110– B133– B147– B157– B174– B177– B178– B189– B228– B291– B303– B312– B331– B335– B358– B371– B372– B389– B395– B402– B404– B413– B425– B434– B436– B458– B460– B468– B482– B485–
0640849646	TruVision Cable, Inc. The following License(s): ALL.
0470779045	USA Wireless Cable, Inc. The following License(s): B053– B149– B167– B172– B185– B224– B277– B300– B378– B411–
0742556235	United States Wireless Cable, Inc. The following License(s): B001– B002– B003– B004– B005– B006– B007– B008– B009– B010– B011– B012– B013– B014– B015– B016– B017– B018– B019– B020– B021– B022– B023– B024– B025– B026– B027– B028– B029– B030– B031– B032– B033– B034– B035– B036– B037– B038– B039– B040– B041– B042– B043– B044– B045– B046– B047– B048– B049– B050– B051– B052– B053– B054– B055– B056– B057– B058– B059– B060– B061– B062– B063– B064– B065– B066– B067– B068– B069– B070– B071– B072– B073– B074– B075– B076– B077– B078– B079– B080– B081– B082– B083– B084– B085– B086– B087– B088– B089– B090– B091– B092– B093– B094– B095– B096– B097– B098– B099– B100– B101– B102– B103– B104– B105– B106– B107– B108– B109– B110– B111– B112– B113– B114– B115– B116– B117– B118– B119– B120– B121– B122– B123– B124– B125– B126– B127– B128– B129– B130– B131– B132– B133– B134– B135– B136– B137– B138– B139– B140– B141– B142– B143– B144– B145– B146– B147– B148– B149– B150– B151– B152– B153– B154– B155– B156– B157– B158– B159– B160– B161– B162– B163– B164– B165– B166– B167– B168– B169– B170– B171– B172– B173– B174– B175– B176– B177– B178– B179– B180– B181– B182– B183– B184– B185– B186– B187– B188– B189– B190– B191– B192– B193– B194– B195– B196– B197– B198– B199– B200– B201– B202– B203– B204– B205– B206– B207– B208– B209– B210– B211– B212– B213– B214– B215– B216– B217– B218– B219– B220– B221– B222– B223– B224– B225– B226– B227– B228– B229– B230– B231– B232– B233– B234– B235– B236– B237– B238– B239– B240– B241– B242– B243– B244– B245– B246– B247– B248– B249– B250– B251– B252– B253– B254– B255– B256– B257– B258– B259– B260– B261– B262– B263– B264– B265– B266– B267– B268– B269– B270– B271– B272– B273– B274– B275– B276– B277– B278– B279– B280– B281– B282– B283– B284– B285– B286– B287– B288– B289– B290– B291– B292– B293– B294– B295– B296– B297– B298– B299– B300– B301– B302– B303– B304– B305– B306– B307– B308– B309– B310– B311– B312– B313– B314– B315– B316– B317– B318– B319– B320– B321– B322– B323– B324– B325– B326– B327– B328– B329– B330– B331– B332– B333– B334– B335– B336– B337– B338– B339– B340– B341– B342– B343– B344– B345– B346– B347– B348– B349– B350– B351– B352– B353– B354– B355– B356– B357– B358– B359– B360– B361– B362– B363– B364– B365– B366– B367– B368– B369– B370– B371– B372– B373– B374– B375– B376– B377– B378– B379– B381– B382– B383– B384– B385– B386– B387– B388– B389– B390– B391– B392– B393– B394– B395– B396– B397– B398– B399– B400– B401– B402– B403– B404– B405– B406– B407– B408– B409– B410– B411– B412– B413– B414– B415– B416– B417– B418– B419– B420– B421– B422– B423– B424– B425– B426– B427– B428– B429– B430– B431– B432– B433– B434– B435– B436– B437– B438– B439– B440– B441– B442– B443– B444– B445– B446– B447– B448– B449– B450– B451– B452– B453– B454– B455– B456– B457– B458– B459– B460– B461– B462– B463– B464– B465– B466– B467– B468– B469– B470– B471– B472– B473– B474– B475– B476– B477– B478– B479– B480– B481– B482– B483– B484– B485– B486– B487– B488– B489– B490– B491– B492– B493–
0411625664	Upsala Telecommunications Technetronics, Inc.

FCC account No.	Name
	The following License(s): B391–
0860479381	Valley Telecommunications, Inc. The following License(s): B244– B347– B420–
0030324249	Vermont Rural Communications Development The following License(s): B063– B249– B352– B388–
0581816252	Vidcomm, Inc. The following License(s): ALL.
0860529254	Virginia Communications, Inc. The following License(s): ALL.
0341680207	W.A.T.C.H. TV Company The following License(s): ALL.
0383198317	WJD Enterprise. Inc. The following License(s): B033– B039– B209– B223– B310–
0870440922	Walter Communications, Inc. The following License(s): ALL.
0570336544	West Carolina Rural Telephone Cooperative, Inc. The following License(s): B016– B178–
2174836444	Western Horizons, Inc. The following License(s): ALL.
5152772333	Western States Wireless, L.P. The following License(s): B041– B053– B064– B069– B077– B089– B149– B168– B171– B172– B188– B224– B300– B366– B375– B381–
3036491195	Wireless Broadcasting Systems of America, Inc. The following License(s): ALL.
0223378353	Wireless Cable International Inc. The following License(s): B362–
0330549489	Wireless Cable Ltd., Ptrs. The following License(s): B190–
0650150718	Wireless Cable of Florida, Inc. The following License(s): B408– B410–
0954394011	Wireless Enterprises, Inc. The following License(s): ALL.
5049267778	Wireless One of North Carolina, L.L.C. The following License(s): B020– B062– B074– B141– B165– B174– B176– B177– B189– B214– B284– B316– B324– B368– B377– B382– B478–
0721256021	Wirless One, Inc. The following License(s): B006– B009– B016– B017– B022– B024– B026– B032– B034– B042– B044– B047– B048– B049– B052– B058– B059– B066– B067– B072– B076– B081– B083– B085– B091– B092– B093– B094– B096– B098– B102– B107– B108– B115– B120– B125– B135– B146– B147– B151– B152– B154– B158– B159– B160– B175– B178– B180– B186– B195– B196– B197– B198– B210– B211– B212– B219– B229– B232– B236– B237– B238– B239– B246– B252– B257– B260– B263– B265– B269– B271– B273– B289– B290– B292– B293– B295– B302– B304– B305– B308– B312– B313– B314– B315– B320– B326– B334– B335– B336– B338– B339– B340– B343– B348– B359– B384– B408– B410– B415– B419– B423– B436– B439– B440– B441– B449– B450– B452– B454– B455– B456– B467– B469– B474– B491–
0232743641	Wireless Telecommunications, Inc. The following License(s): B116– B124– B179– B181– B201– B227– B240– B249– B252– B266– B313– B342– B357– B360– B370– B398– B405– B406– B408– B483–
4076827104	World Wide Wireless, L.P. The following License(s): All.

Attachment B

FCC Multipoint Distribution Srvc Aucti

Non-Qualified Bidders

Auction ID: 6

(Sorted by Applicant)

Date of Report: 11/7/95

FCC account No.	Name
0541746373	AGL Inc.
0370703673	Adams Telcom. Inc.
0860786531	Altron Communications, L.C.
2028610106	American Car Telephone Co., Inc.
5108064131	Bidco.
5184478300	CS Wireless, Inc.
7139642782	CableNet Group, (USA), Ltd.
3103932741	California Shopping Network Partners.
0660494090	Canbbean Wirless Systems, Inc.
9164582195	Charter & Myers, G.P.
3044752309	Crystal Vision Communications, Inc.
2174834038	Custom Strategies, Inc.
3037565600	FP Broadcasting, Inc.
0630090050	Gulf Coast Services, Inc.
0541597273	Hardin and Associates, Inc.
0570337423	Horry Telephone Cooperative, Inc.
7178464738	ICC.
0954494609	Interactive America Corporation.
0731315508	J & B LTD.
0421387946	METRO BUSINESS JOURNAL, INC.
2025887500	Macon Wireless Partnership.
0222741313	Magnavision Corporation.
6153339288	Nashville Wireless Cable Television, Inc.
0030330109	New England Wireless, Inc.
8045232549	Phoenix Data Communications, Inc.
0660177812	Puerto Rico Telephone Company.
0582136614	SWCC, Inc.
8024763426	Sanguinetti Investment Corp.
2173410721	Sheridan Ruggles.
0421367457	Starcom, Inc.
0760183743	Stephan L. Honore.
0411787309	The Corcoran Group Inc.
0003476562	USLink, Inc.
8097227815	WHTV Broadcasting Corp.
0541499768	Wave International, Inc.

[FR Doc. 95–28121 Filed 11–24–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011375–020.

Title: Trans-Atlantic Conference Agreement.

Parties:

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Hapag-Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line
Cho Yang Shipping Co. Ltd.
Mediterranean Shipping Company, S.A.
DSR-Senator Lines
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A, de C.V.
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.

Synopsis: The proposed amendment provides for additional time to conclude negotiations and administrative processing of service contracts.

Agreement No.: 203–011519.

Title: Tricon/Hanjin Transpacific Agreement.

Parties:

Cho Yang Shipping Co. Ltd.
DSR-Senator Lines
Hanjin Shipping Co., Ltd.

Synopsis: The proposed Agreement authorizes the parties to charter space from one another and to rationalize sailings in the trade between U.S. West Coast ports (Oakland/Long Beach range) and East Coast ports (Key West, FL./Bangor, Me. range), and between ports in Asia (Singapore/Japan range). In addition, the parties may discuss policy with regard to membership in any agreements between or among other carriers serving the Trade, or any sector of the Trade to which any party may be a member. Adherence to any agreement reached is voluntary.

Agreement No.: 203–011520.

Title: Columbus Line/Hapag-Lloyd Slot Charter and Sailing Agreement.

Parties:

Hamburg Sudamerikanische Dampfschiffahrts Gessellschaft Eggert & Amsinck
Hapag-Lloyd AG

Synopsis: The proposed Agreement permits the parties to consult and agree upon the deployment and utilization of vessels, to charter space from one another, and to rationalize sailings in the trade between ports on the West Coast of South America, on the one hand, and ports on the Atlantic Coast of the United States, on the other hand. In addition, the parties may discuss and agree upon rates, rules, service items, terms and conditions of service contracts and tariffs maintained by either party or by any conference to which any party may be a member. Adherence to any agreement reached is voluntary.

Agreement No.: 232–011521.

Title: Tricon/Hanjin Far East Services Slot Charter Agreement.

Parties:

Hanjin Shipping Co., Ltd. (''Hanjin'')
Tricon Parties, Cho Yang Shipping Co. Ltd., DSR-Senator Lines

Synopsis: The proposed Agreement would permit Hanjin to charter space from the Tricon Parties and to maintain a fixed day weekly service in the trade between ports in the Far East and U.S. Atlantic and East Coast ports. The parties have requested a shortened review period.

Agreement No.: 224–200961.

Title: Jacksonville Port Authority/Blue Star (North America) Ltd. Wharfage Agreement.

Parties:

Jacksonville Port Authority (''JAXPORT'')
Blue Star (North America) Ltd. (''Blue Star'')

Synopsis: The proposed Agreement sets wharfage rates for Blue Star at JAXPORT.

Agreement No.: 224–200962.

Title: Port of Galveston/Suderman Contracting Stevedores, Inc. Terminal Agreement

Parties:

Port of Galveston
Suderman Contracting Stevedores, Inc. (''Suderman'')

Synopsis: The proposed Agreement authorizes Suderman to provide labor to maintain and repair cranes and other container yard equipment at the East End General Marine Terminal.

By Order of the Federal Maritime Commission.

Dated: November 21, 1995.

Joseph C. Polking,

Secretary.

FR Doc. 95–28873 Filed 11–24–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Grupo Financiero Banamex Accival, S.A. de C.V.; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 94-467) published on pages 1400 and 1401 of the issue for Monday, January 10, 1994.

Under the Federal Reserve Bank of San Francisco heading, the entry for Grupo Financiero Banamex Accival, S.A. de C.V., is revised to read as follows:

1. Grupo Financiero Banamex Accival, S.A., de C.V., Mexico, D.F., Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Banco Nacional de Mexico, S.A., Mexico, D.F., Mexico, and thereby indirectly acquire Banamex US Bancorp, Los Angeles, California.

In connection with this application, Applicant proposes to acquire ACCI Securities, Inc., New York, New York, and thereby engage in full service securities brokerage activities, pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y. Applicant also proposes to engage in the following activities which the Board previously has determined by order to be closely related to banking: (1) acting as agent in the private placement of all types of securities; and (2) acting as a riskless principal in the purchase and sale of all types of securities on the order of investors. Applicant has stated that it will conduct the proposed activities within the limitations and prudential guidelines established by the Board in its previous orders. *See Bank of Nova Scotia*, 76 Federal Reserve Bulletin 545 (1990); *J.P. Morgan & Co., Incorporated*, 76 Fed. Res. Bull. 26 (1990); *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989).

Comments on this application must be received by December 2, 1995.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28821 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

Pioneer Community Group, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-27777) published on pages 56600 and 56601 of the issue for Thursday, November 9, 1995.

Under the Federal Reserve Bank of Richmond heading, the entry for Pioneer Community Group, Inc., is revised to read as follows:

1. Pioneer Community Group, Inc., Iaeger, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Iaeger, Iaeger, West Virginia.

Comments regarding this application must be received not later than November 29, 1995.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28824 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

UJB Financial 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 December 11, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. UJB Financial Corporation, Princeton, New Jersey; to acquire 100 percent of the voting shares of Flemington National Bank and Trust Company, Flemington, New Jersey.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Norwood Financial Corp., Honesdale, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Wayne Bank, Honesdale, Pennsylvania.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Community First Bancorp, Inc., Reynoldsville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Reynoldsville, Reynoldsville, Pennsylvania.

D. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Calvin B. Taylor Bankshares, Inc., Berlin, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Calvin B. Taylor Banking Company of Berlin, Maryland, Berlin, Maryland.

2. Highlands Bankshares, Inc., Abingdon, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Highlands Union Bank, Abingdon, Virginia.

E. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Community Bancshares of Mississippi, Inc. ESOP, Forest, Mississippi; and Community Bancshares of Mississippi, Inc., Forest, Mississippi, to acquire 100 percent of the voting shares of Coast Community Bank, Biloxi, Mississippi, a *de novo* bank.

2. First Hardee Holding Corporation, Wauchula, Florida; to become a bank holding company by acquiring 85.32 percent of the voting shares of First National Bank of Wauchula, Wauchula, Florida.

F. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. ISB Financial Corp., Iowa City, Iowa; to acquire 100 percent of the voting shares of W.S.B., Inc., Washington, Iowa, and thereby indirectly acquire Washington State Bank, Washington, Iowa.

G. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Sharon Bancshares, Inc., Sharon, Tennessee; to merge with Weakley County Bancshares, Inc., Dresden, Tennessee, and thereby indirectly

acquire Weakley County Bank, Dresden, Tennesse.

2. The Templar Fund, Inc., St. Louis, Missouri; to acquire an additional 4.0 percent, for a total of 21.70 percent, of the voting shares of Truman Bank, Clayton, Missouri, which is controlled by Truman Bancorp, Inc., St. Louis, Missouri.

H. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. BNCCORP, Inc., Bismarck, North Dakota; to acquire 100 percent of the voting shares of BNC National Bank of Minnesota, Minneapolis, Minnesota, a *de novo* bank.

2. First Manistique Corporation, Manistique, Michigan; to acquire 100 percent of the voting shares of South Range State Bank, South Range, Michigan.

3. Private Bancorporation, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Private Bank Minnesota, Minneapolis, Minnesota, a *de novo* bank.

I. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Admiral Steel Corporation, Alsip, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Munden Bankshares, Inc., Munden, Kansas, and thereby indirectly acquire Munden State Bank, Munden, Kansas.

2. Ameribank Corporation, Shawnee, Oklahoma; to acquire 94 percent of the voting shares of United Oklahoma Bankshares, Inc., Del City, Oklahoma, and thereby indirectly acquire United Bank, Del City, Oklahoma.

3. Archer, Inc., Osceola, Nebraska; parent of Osceola Insurance, Inc., Osceola, Nebraska, to retain 15.31 percent, and to acquire an additional 2 percent for a total of 17.31 percent, of the voting shares, of Guaranty Corporation, Denver, Colorado, and thereby indirectly acquire Guaranty Bank & Trust Company, Denver, Colorado.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28817 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

American National Corporation; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-27629) published on pages 56337 and 56338 of the issue for Wednesday, November 8, 1995.

Under the Federal Reserve Bank of Kansas City heading, the entry for American National Corporation, is revised to read as follows:

1. American National Corporation, Omaha, Nebraska; to acquire 100 percent of the voting shares of Else Investment Company, Fairbury Nebraska, and thereby indirectly acquire Fairbury State Bank, Fairbury, Nebraska.

Comments on this application must be received by December 1, 1995.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28818 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

American Financial Group, Inc., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 11, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. American Financial Group, Inc., Cincinnati, Ohio, and its subsidiaries, Great American Insurance Co., and Great American Life Insurance Company, both of Cincinnati, Ohio; to acquire an additional 12.5 percent, for a total of 16.1 percent, of the voting shares of Provident Bancorp, Inc., Cincinnati, Ohio, and thereby indirectly acquire Provident Bank, Cincinnati, Ohio, and Provident Bank of Kentucky, Alexandria, Kentucky.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Michael L. Schnell, Spearman, Texas, to acquire an additional 6.84 percent, for a total of 18.05 percent; Robert C. Schnell, Spearman, Texas, to acquire an additional 5.05 percent, for a total of 13.30 percent, Peyton S. Gibner, Houston, Texas, to acquire an additional 11.84 percent, for a total of 31.26 percent; Lea Ann Schrader, Fritch, Texas, to acquire an additional 11.84 percent, for a total of 31.26 percent, of the voting shares of First State Bankshares, Inc., Spearman, Texas, and thereby indirectly acquire First State Bank, Spearman, Texas.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28819 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

Campbellsville Bancorp, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-27629) published on pages 56337 of the issue for Wednesday, November 8, 1995.

Under the Federal Reserve Bank of St. Louis heading, the entry for Campbellsville Bancorp, Inc., is revised to read as follows:

1. Campbellsville Bancorp, Inc., Campbellsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Campbellsville National Bank, Campbellsville, Kentucky.

Comments on this application must be received by December 11, 1995.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28820 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

Banknorth Group, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 11, 1995.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Banknorth Group, Inc., Burlington, Vermont; to engage *de novo* through its subsidiary, The Stratevest Group, National Association, Burlington, Vermont, in trust company functions, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Progressive Growth Corp., Gaylord, Minnesota; to engage *de novo* through its subsidiary, Synectic Solutions, Inc., Gaylord, Minnesota, in data warehousing, computer network integration services, communications services related to the transmission of economic and financial data, database management services, and other data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. Progressive Growth Corp., Gaylord, Minnesota; to engage *de novo* through its subsidiary, Progressive Technologies, Inc., Gaylord Minnesota, in data warehousing, computer network integration services, communications services related to the transmission of economic and financial data, database management services, and other data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Community Bancshares, Inc., Knob Noster, Missouri; to engage *de novo* through its subsidiary, First Mortgage Co., Inc., Knob Noster, Missouri, in the origination and servicing of real estate mortgages and resale of the same in the secondary market, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Neighborhood Bancorp, San Diego, California; to engage *de novo* through its subsidiary Neighborhood Capital Advisors, San Diego, California, in community development activities, pursuant to § 225.25(b)(6); and acting as investment or financial advisor, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. Neighborhood Bancorp, San Diego, California; to engage *de novo* through its subsidiary Neighborhood Housing Development Corporation, San Diego, California, in community development activities, pursuant to § 225.25(b)(6); making and servicing loans, pursuant to § 225.25(b)(1), and providing consumer financial counseling, pursuant to § 225.25(b)(20) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28823 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

Reliance Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Reliance Bancshares, Inc., Milwaukee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Reliance Savings Bank, Milwaukee, Wisconsin.

In connection with this application, Applicant also has applied to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; to acquire, through its wholly owned subsidiary, Eleven Acquisition Corp., Minneapolis, Minnesota, 100 percent of the voting shares of First Interstate Bancorp, Los Angeles, California, and thereby indirectly acquire First Interstate Bank of California, Los Angeles, California, First Interstate Bank of Montana, National Association, Kalispell, Montana, First Interstate Bank, Ltd., Los Angeles, California, First Interstate Bank of Englewood, National Association, Englewood, Colorado, First Interstate Bank of Alaska, National Association, Anchorage, Alaska, First Interstate Bank of Arizona, National Association, Phoenix, Arizona, First Interstate Bank of Denver, National Association, Denver, Colorado, First Interstate Bank of Idaho, National Association, Boise, Idaho, First Interstate Bank of New Mexico, National Association, Santa Fe, New Mexico, First Interstate Bank of Nevada, National Association, Las Vegas, Nevada, First Interstate Bank of Oregon, National Association, Portland, Oregon, First Interstate Bank of Texas, National Association, Houston, Texas, First Interstate Bank of Utah, National Association, Salt Lake City, Utah, First Interstate Bank of Washington, National Association, Seattle, Washington, First Interstate Bank of Wyoming, National Association, Casper, Wyoming, and First Interstate Central Bank, Calabasas, California.

In connection with this application, First Bank System, Inc., also has applied to acquire First Interstate Resource Finance Associates, Newport Beach, California, a venture capital firm, and thereby engage in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

First Bank System also has applied to exercise an option to acquire up to 19.9 percent of the voting shares of First Interstate Bancorp.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28825 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

National Westminster Prima Limited, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 11, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. National Westminster Prima Limited, London, England; to acquire Infinet Payment Services Inc., Hackensack, New Jersey, and thereby engage in data processing, pursuant to § 225.25(b)(7) of the Board's Regulation Y and Board Order (*The Bank of New York Company, Inc., BayBanks, Inc.*, 80 Fed. Res. Bull. 1107 (1994)); Natwest Securities Corporation, New York, New York, and thereby engage in securities activities, including securities brokerage and financial and investment advisory activities, both separately and on a combined basis, for institutional customers, pursuant to § 225.25(b)(15) of the Board's Regulation Y and Board Order (72 Fed. Res. Bull. 584 (1986)); NatWest International Securities Inc., New York, New York, and thereby engage in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y; Westminster Research Associates Inc., New York, New York, and thereby engage in certain securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y; NatWest Investment Management, Inc., Boston, Massachusetts, and thereby engage in investment advisory activities, pursuant to § 225.25(b)(4) and § 225.25(b)(19) of the Board's Regulation Y; NatWest Markets Leasing Corporation, New York, New York, and thereby engage in lending and leasing activities, pursuant to §§ 225.25(b)(1) and 225.25(b)(5) of the Board's Regulation Y; NatWest Equity Corporation, New York, New York, and thereby engage in lending activities, pursuant to § 225.25(b)(1) the Board's Regulation Y; and NatWest Leasing Corporation, New York, New York, and thereby engage in lending and leasing activities, pursuant to §§ 225.25(b)(1) and 225.25(b)(5) of the Board's Regulation Y. Applicant will be a subsidiary of National Westminster Bank, plc, London, England, and NatWest Holding Inc., New York, New York. The activities will be conducted worldwide.

2. Saban, S.A., Gilbralter, New York, *RNYC Holdings LTD.*, Gilbralter, New York, and *Republic New York Corporation*, New York, New York; to acquire Brooklyn Bancorp, Inc., Brooklyn, New York, and thereby indirectly acquire its subsidiary, Crossland Federal Savings Bank, Brooklyn, New York, and thereby engage in operation a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Monoracy Bancshares, Inc., Taneytown, Maryland; to acquire Royal Oak Savings Bank, F.S.B., Randallstown, Maryland, and thereby engage in operating a federal savings bank, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to acquire 100 percent of the voting shares of Republic Mortgage Corporation, Salt Lake City, Utah, and Republic's 45 percent of the voting shares in World Mortgage, Logan, Utah, a Utah general partnership, and Republic's 51 percent interest in Republic Mortgage II L.C., Salt Lake City, Utah, a Utah limited liability company, and thereby engage in making and servicing mortgage loans, pursuant to §225.25(b)(1) of the Board's Regulation Y.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Banterra Corp, Eldorado, Illinois; to acquire through its subsidiary, Banterra Insurance Services, Inc., Eldorado, Illinois, certain assets of Tanner Insurance Agency, Galatia, Illinois, and thereby engage in general insurance activities in a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28822 Filed 11–24–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Daniel P. Bednarik, Ph.D., Centers for Disease Control and Prevention (CDC): Based on an investigation conducted by the Division of Research Investigations, ORI found that Daniel P. Bednarik, Ph.D., engaged in scientific misconduct by fabricating and falsifying research data in two scientific manuscripts that were submitted for publication to the journal Nucleic Acids Research and to the journal AIDS. One paper, entitled ''Expression of the human (cytosine-5) methyltransferase is regulated by alternative mRNA splicing,'' was not accepted and the other, entitled ''Indirect evidence for an EBV–HIV hybrid virus: Human immunodeficiency virus type 1 and Epstein-Barr virus genome association,'' was withdrawn before review. Dr. Bednarik is a former employee of CDC, and the research was done while he was employed by CDC.

Dr. Bednarik and ORI have entered into a Voluntary Exclusion Agreement, which the parties agreed shall not be construed as an admission of liability or wrongdoing on the part of Dr. Bednarik. Dr. Bednarik has agreed not to appeal ORI's jurisdiction or its findings and has further voluntarily agreed:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government, as defined in 45 CFR Part 76 and 48 CFR Subparts 9.4 and 309.4 (Debarment Regulations) for a period of two (2) years, beginning on October 30, 1995;

(2) That any institution employing the Respondent be required to submit, in conjunction with each application for PHS funds or report of PHS funded research in which the Respondent is involved, a certification that the data provided by the Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application or report for a period of one (1) year following his exclusion;

(3) That any institution that submits an application for PHS support for a research project that proposes the Respondent's participation or that uses the Respondent in any capacity on PHS supported research, must concurrently submit a plan for supervision of the Respondent's duties, designed to ensure the scientific integrity of Dr. Bednarik's research, for a period of one (1) year following his exclusion; and

(4) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for a period of three (3) years, beginning on October 30, 1995.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigation, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–28839 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–17–P

Administration on Aging

White House Conference on Aging

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Title II of the Older Americans Act Amendments of 1987, Pub. L. 100–175 as amended by Pub. L. 102–375 and Pub. L. 103–171, that the 1995 White House Conference on Aging Policy Committee will hold a meeting on Wednesday, December 13, 1995, in Washington, DC. The general meeting will begin at 1 pm and end at approximately 4 pm. The meeting will be held in room 106 of the Dirksen Senate Office Building at C and First Streets, NE.

The general meeting of the Committee shall be open to the public. The proposed agenda includes a vote on the final report of the Conference which is to be transmitted to the President and the Congress.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 501 School Street, SW., 8th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: White House Conference on Aging, 501 School Street, SW., 8th Floor, Washington, DC 20024; telephone (202) 245–7116.

Fernando M. Torres-Gill,

Assistant Secretary for Aging.

[FR Doc. 95–28848 Filed 11–24–95; 8:45 am]

BILLING CODE 4130–02–M

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment.

Type of Information Collection Request: New; *Title of Information Collection:* Medicare Carrier Provider/Supplier Enrollment Application; *Form No.:* HCFA–R–186; *Use:* This information is needed to enroll providers/suppliers by identifying them, verifying their qualifications and eligibility to participate in Medicare, and to price and pay their claims

correctly; *Frequently:* Initial application; *Affected Public:* Business or other for profit, Federal Government; *Number of Respondents:* 160,000; *Total Annual Hours:* 240,000.

To request copies of the proposed paperwork collection referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Zaneta Davis, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 14, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 95–28758 Filed 11–24–95; 8:45 am]

BILLING CODE 4120–03–M

Health Standards and Quality Bureau; Statement of Organization, Functions, and Delegations of Authority; Correction

AGENCY: Health Care Financing Administration, HHS.

ACTION: Correction.

SUMMARY: In notice document 95–20692, page 43603 in the first column, in the issue of Tuesday, August 22, 1995, the functional statement for the Survey Training Improvement Team (FLH1) did not accurately reflect the current functions. The new functional statement will read as follows:

a. Survey Training Improvement Team (FLH1)

- Develops and implements the national survey training system.
- Directs and coordinates development, measurement and improvement of an integrated survey training program for HCFA regional office and State agency personnel on interpretation of regulations, survey protocols, procedures and techniques and certification issues.
- In conjunction with the specific program centers, insures that training schedules, materials and techniques are current and comprehensive and meet the needs of HCFA regional office and State agency personnel.
- Serves as the focal point for development of HCFA's distance learning network.
- Evaluates program-related data, including customer service and systems performance data, and develops approaches for improvements to program management, operations and training.
- Manages mission specific contracts.
- Serves as the focal point for administering the certification of Continuing Education Units under the auspices of the International Association for Continuing Education and Training.

Dated: November 7, 1995.

William F. Broglie,

Director, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–28871 Filed 11–24–95; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Gontran Lamberty, Dr.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18–A55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Dated: November 21, 1995.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 95–28895 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–15–P

Announcement of Technical Assistance Workshops for Programs Administered by the Division of Disadvantaged Assistance, Bureau of Health Professions

SUMMARY: The Health Resources and Services Administration (HRSA) announces that technical assistance workshops will be held for potential applicants for the FY 1996 competitive grant cycles for the Health Careers Opportunity Program, Centers of Excellence, and the Minority Faculty Fellowship Program.

FOR FURTHER INFORMATION CONTACT: William S. Brooks, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–17, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4493.

SUPPLEMENTARY INFORMATION: The Division of Disadvantaged Assistance will be conducting application preparation technical assistance workshops for potential applicants for the FY 1996 competitive grant cycles for the Health Careers Opportunity Program, Centers of Excellence, and the Minority Faculty Fellowship Program. The workshops are scheduled as follows:

Crowne Plaza Hotel, 4445 Main Street, Kansas City, Missouri 64111, (816) 531–3000, December 4 and 5.

Radisson Hotel San Diego, 1433 Camino del Rio South, San Diego, California 92109, (619) 260–0111, December 7 and 8.

Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852, (301) 468–1100, December 11 and 12.

Parklawn Building, Conference Room G, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2100 January 4 and 5, 1996.

The program will commence at 9 a.m. each day. Attendees must make their own hotel reservations. Please reference the ''Disadvantaged Health Professions Grant Technical Assistance Meeting.'' Expenses incurred by the attendees will not be supported by the Federal Government. Participation in the technical assistance meetings does not assure approval and funding of applications submitted for competitive review.

Dated: November 21, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–28837 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Family Heart Study (FHS).
Date: December 13–14, 1995.

Time: 7:30 p.m.
Place: DoubleTree Hotel, Rockville, Maryland.
Contact Person: Anthony M. Coelho, Jr., Ph.D., Rockledge II, Room 7182, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0277.
Purpose/Agenda: To review and evaluate grant applications.
The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(Catalog of Federal Domestic Assistance Programs Nos. 93.387, Heart and Vascular Diseases Research; 93;838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)
Dated: November 20, 1995.
Susan K. Feldman,
Committee Management Officer, NIH.
[FR Doc. 95–28752 Filed 11–24–95; 8:45 am]
BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Biological and Physiological Sciences.
Date: November 27, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4192, Telephone Conference.
Contact Person: Dr. Lynwood Jones, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4192, Bethesda, Maryland 20892, (301) 435–1153.

Name of SEP: Behavioral and Neurosciences.
Date: November 28, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5190, Telephone Conference.
Contact Person: Dr. Herman Teitelbaum, Scientific Review Administrator, 6701 Rockledge Drive, Room 5190, Bethesda, Maryland 20892, (301) 435–1254.

Name of SEP: Biological and Physiological Sciences.
Date: November 28, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5202, Telephone Conference.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Microbiological and Immunological Sciences.
Date: November 28, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4198, Telephone Conference.
Contact Person: Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 4198, Bethesda, Maryland 20892, (301) 435–1218.

Name of SEP: Biological and Physiological Sciences.
Date: November 29, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 4192, Telephone Conference.
Contact Person: Dr. Lynwood Jones, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4192, Bethesda, Maryland 20892, (301) 435–1153.

Name of SEP: Biological and Physiological Sciences.
Date: November 29, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1015.

Name of SEP: Biological and Physiological Sciences.
Date: November 30, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1015.

Name of SEP: Clinical Sciences.
Date: November 30, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Biological and Physiological Sciences.
Date: December 1, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4204, Telephone Conference.
Contact Person: Dr. Calbert Laing, Scientific Review Administrator, 6701 Rockledge Drive, Room 4204, Bethesda, Maryland 20892, (301) 435–1221.

Name of SEP: Biological and Physiological Sciences.
Date: December 1, 1995.
Time: 10 a.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1015.

Name of SEP: Biological and Physiological Sciences.
Date: December 1, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5122, Telephone Conference.
Contact Person: Dr. Michael Lang, Scientific Review Administrator, 6701 Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1015.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 1, 1995.
Time: 11 a.m.
Place: NIH, Rockledge 2, Room 4186, Telephone Conference.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Name of SEP: Clinical Sciences.
Date: December 4, 1995.
Time: 12 p.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 4, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Microbiological and Immunological Sciences.
Date: December 4, 1995.
Time: 3 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892. (301) 435–1146.

Name of SEP: Clinical Sciences.
Date: December 5, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892. (301) 435–1787.

Name of SEP: Behavioral and Neurosciences.
Date: December 5, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892. (301) 435–1247.

Name of SEP: Biological and Physiological Sciences.
Date: December 5, 1995.
Time: 10 a.m.
Place: NIH, Rockledge 2, Room 5126, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 6701 Rockledge Drive, Room 5126, Bethesda, Maryland 20892. (301) 435–1017.

This notice is being published less than 15 days prior to the above meetings due to the

urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: December 6, 1995.
Time: 10 a.m.
Place: NIH, Rockledge 2, Room 5202, Telephone Conference.
Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892. (301) 435–1260.

Name of SEP: Multidisciplinary Sciences.
Date: December 6, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 5114, Telephone Conference.
Contact Person: Dr. Gerald Becker, Scientific Review Administrator, 6701 Rockledge Drive, Room 5114, Bethesda, Maryland 20892. (301) 435–1170.

Name of SEP: Clinical Sciences.
Date: December 6, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4140, Telephone Conference.
Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, Maryland 20892. (301) 435–1214.

Name of SEP: Biological and Physiological Sciences.
Date: December 7, 1995.
Time: 1 p.m.
Place: Sheraton Inn, Crystal City, Virginia.
Contact Person: Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 5124, Bethesda, Maryland 20892. (301) 435–1016.

Name of SEP: Biological and Physiological Sciences.
Date: December 8, 1995.
Time: 1:30 p.m.
Place: NIH, Rockledge 2, Room 5126, Telephone Conference.
Contact Person: Dr. Anne Clark, Scientific Review Administrator, 6701 Rockledge Drive, Room 5126, Bethesda, Maryland 20892. (301) 435–1017.

Name of SEP: Clinical Sciences.
Date: December 11, 1995.
Time: 1 p.m.
Place: NIH, Rockledge 2, Room 4104, Telephone Conference.
Contact Person: Dr. Priscilla Chen, Scientific Review Administrator, 6701 Rockledge Drive, Room 4104, Bethesda, Maryland 20892, (301) 435–1787.

Name of SEP: Chemistry and Related Sciences.
Date: December 12, 1995.
Time: 9 a.m.
Place: NIH, Rockledge 2, Room 4156, Telephone Conference.
Contact Person: Dr. Ronald DuBois, Scientific Review Administrator, 6701 Rockledge Drive, Room 4156, Bethesda, Maryland 20892, (301) 435–1722.

Name of SEP: Clinical Sciences.
Date: December 13, 1995.
Time: 2 p.m.
Place: NIH, Rockledge 2, Room 4140, Telephone Conference.
Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 6701 Rockledge Drive, Room 4140, Bethesda, Maryland 20892, (301) 435–1214.

Name of SEP: Clinical Sciences.
Date: December 14, 1995.
Time: 12 p.m.
Place: NIH, Rockledge 2, Room 4138, Telephone Conference.
Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 6701 Rockledge Drive, Room 4138, Bethesda, Maryland 20892, (301) 435–1213.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Behavioral and Neurosciences.
Date: November 30, 1995.
Time: 8:30 a.m.
Place: Bethesda, Marriott, Bethesda, Maryland.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–28753 Filed 11–24–95; 8:45 a.m.]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, As amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Review of Minority Applications (K14s).
Date: December 12–13, 1995.
Time: 8:00 p.m.
Place: Holiday Inn Bethesda, Bethesda, Maryland.
Contact Person: Dr. Eric Brown, Rockledge II, Room 7204, 6701 Rockledge Drive, Bethesda, Maryland 20892, (301) 435–0299.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Dieases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: November 20, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–28754 Filed 11–24–95; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Research and Demonstration Projects for Indian Health

AGENCY: Indian Health Service.

ACTION: Notice of single source cooperation agreement with the American Indian Health Care Association, Inc. (AIHCA).

SUMMARY: The Indian Health Service (IHS) announces the award of a cooperative agreement to the American Indian Health Care Association, Inc. (AIHCA) for a demonstration project for urban Indian health care advocacy, consultation, health data dissemination, training, and technical assistance. The project is for a one year project period effective September 30, 1995, to September 29, 1996. Funding for the project is $200,000.

The award is issued under the authority of the Public Health Service Act, sec. 301, and is listed under Catalog of Federal Domestic Assistance number 93.933.

The specific objectives of the project are:

1. To develop model financial management systems for use by the Title V urban Indian health programs.

2. To provide advice to and consult with Title V urban Indian health programs to develop a plan to address the needs of urban programs.

3. To maintain relationship with and document support of the Title V urban Indian health programs.

Justification for Single Source

This project has been awarded on a non-competitive single source basis. AIHCA is the only nationwide Indian organization which is specifically established to address the health needs of American Indians living in urban areas. Furthermore, it is the only

nationwide organization of urban Indians supporting the growth of the urban Indian health care delivery system, and providing education, training, and technical assistance to the urban Indian programs.

Use of Cooperative Agreement

A cooperative agreement has been awarded because of anticipated substantial programmatic involvement by IHS staff in the project. Substantial programmatic involvement is as follows:

1. IHS staff will attend at least one Board meeting or national meeting annually. The purpose will be to present the IHS perspective on current health care and legislative issues affecting the urban Indian people.
2. IHS staff will provide input and approve model management policies and procedures developed by AIHCA.
3. IHS staff will receive copies of articles submitted for publication in the National Indian Health Board newsletter.
4. IHS staff will participate in the redesign planning process.
5. IHS staff will be involved in the selection and approval process for hiring key personnel. Key personnel include the Executive Director and consultants. AIHCA must submit Executive Director selection criteria to IHS for approval.

Contacts

For program information, contact Mr. Elmer Brewster, Chief, Urban Programs, Office of Health Programs, Indian Health Service, Room 5A–44, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852 (301) 443–4680. For grants management information, contact Mrs. M. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Operations, Suite 100, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Rockville, Maryland 20852 (301) 443–5204.

Dated: November 13, 1995.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 95–28896 Filed 11–24–95; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 46621, September 7, 1995) is amended to reflect the reorganization of the Office of the Director, National Institute of Child Health and Human Development (NICHD) (HNT). The reorganization consists of the following: (1) Retitle the Office of Science Policy and Analysis (HNT14) to the Office of Science Policy, Analysis and Communication (OSPAC) and revise its functional statement and (2) transfer the functions of the Office of Research Reporting (ORR) (HNT13) to OSPAC (HNT14) and abolish ORR. This reorganization improves the ability of the NICHD to fulfill its mission by restructuring the OD/NICHD and thereby improving the integration of related program areas and streamlining operations.

Section HN-B, Organization and Functions is amended as follows: (1) Under the heading *Office of Research Reporting (HNT13),* delete the title and functional statement in their entirety.

(2) Under the heading *Office of Science Policy and Analysis (HNT14),* delete the title and the functional statement and substitute the following:

Office of Science Policy, Analysis and Communication (HNT14). (1) Conducts or assimilates studies on emerging science or policy issues within the fields of population research; the health of mothers, children, and families; and medical rehabilitation; (2) collects, classifies, summarizes, analyzes, and interprets research and research training data, scientific literature, and technical reports; (3) develops and maintains a comprehensive communications program, disseminating information to the lay and professional publics, the media, voluntary organizations, and other constituencies; (4) develops and issues reports, briefing materials, and other compilations of the Institute's activities, programs, and policies for use in preparation for congressional hearings and program planning and implementation; (5) tracks, analyzes, and reports scientific, administrative, and fiscal data on Institute programs; (6) serves as Institute legislative liaison, maintaining an awareness of ongoing legislative activities, and coordinating the planning and preparation of legislative proposals for the Institute; (7) coordinates activities leading to the selection of program objectives and the development of plans reflecting Institute priorities; (8) serves as Institute referral office; (9) sponsors consensus conferences and conducts analyses for the Institute technology assessment and transfer activities; (10) prepares and maintains comprehensive multi-year program plans; (11) develops mechanisms to coordinate all office functions with other relevant agencies; and (12) advises staff on application of the Freedom of Information Act to NICHD's programs.

Dated November 8, 1995.

Harold Varmus,

Director, NIH.

[FR Doc. 95–28755 Filed 11–24–95; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 60 FR 48518, September 19, 1995), is amended to reflect the reorganization of the Office of the Director, National Heart, Lung, and Blood Institute (NHLBI) (HNH) as follows: retitle the Office of Program Planning and Evaluation (HNH12) to the Office of Science and Technology and revise its functional statement.

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading *National Heart, Lung, and Blood Institute (HNH12), Office of Program Planning and Evaluation (HNH12),* delete the title and functional statement in their entirety and substitute the following:

Office of Science and Technology (HNH12)

(1) Advises the Director, NHLBI, on program policies; (2) assists the Director, NHLBI, in establishment of Institute goals and in development of programs to meet these goals; (3) coordinates and assesses progress on cardiovascular, lung, and blood diseases; blood resources; and sleep disorders for use in program reports, development of policy, and operations; (4) coordinates presentation of Institute activities in reports and presentations to the Director, NIH, the Secretary, DHHS, the Congress, and the public; (5) coordinates and tracks legislation and prepares Congressional testimony materials; (6) coordinates and enhances NHLBI minority and women health activities; (7) develops and coordinates NHLBI automated office systems and data processing; (8) develops and maintains comprehensive and accurate computerized information systems and (9) coordinates and provides guidance concerning international cooperative research activities.

Dated: November 8, 1995.
Harold Varmus,
Director, NIH.
[FR Doc. 95–28756 Filed 11–24–95; 8:45 am]
BILLING CODE 4140–01–M

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part HB, (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 60 FR 55723, November 2, 1995 is amended to reflect the addition of the Refugee Health Program:

Under HB–20, Organization and Functions amend the functional statements for the Bureau of Primary Health Care (HBC), by adding the following:

Division of Immigration Health Services (HBC9). Serves as the primary focal point for planning, management, policy formulation, program coordination, direction and liaison for all health matters pertaining to aliens detained by the Immigration and Nationalization Service (INS). Additionally, the Division is responsible for provision of direct primary health care at all INS Service Processing Centers throughout the Nation. Specifically: (1) works with the INS to plan, manage, formulate policy, coordinate programs, and provide direction and liaison for health matters pertaining to aliens detained by the INS, (2) manage INS direct primary care facilities and assist in oversight of care provided in contract facilities; (3) provides direct primary health care to the detained alien population; (4) develops and implements policy and guidelines relating to detained alien health and mental health screening and care; (5) provides liaison between INS, other Department of Justice activities, and other DHHS components on all issues involving health care of detained aliens and INS employees; (6) provides medical support for deportation and repatriation transportation of aliens by the INS; (7) reviews and evaluates all INS alien health activities in terms of unmet needs, operational improvement, and health and safety of both the health care facilities and detention environments; (8) compiles statistical data of the health status of detained alien population and the cost of care within the Division of Immigration Health Services and the care purchased outside of the INS.

Delegation of Authority

All delegations and redelegations of authorities to offices and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

This reorganization is effective upon the date of signature.

Dated: November 9, 1995.
Ciro V. Sumaya,
Administrator, Health Resources and Services.
[FR Doc. 95–28897 Filed 11–24–95; 8:45 am]
BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR 3991–N–01]

Notice: Request for Proposals (RFP) and Program Guidelines for Assignment of Grant Responsibilities Under the Innovative Homeless Initiatives Demonstration Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice: Request for Proposals (RFP) and Program Guidelines for Assignment of Grant Responsibilities under the Innovative Homeless Initiatives Demonstration Program.

SUMMARY: This Request for Proposals (RFP) solicits proposals to receive assignment of and to assume the obligations of the Recipient under Innovative Demonstration Program Project No. NY36I94–0628, a funded project in New York City designed to serve homeless persons in the Midtown area, in particular the many homeless persons who reside in or near Grand Central Station.

DATES: An original and one copy of the proposal are due no later than December 18, 1995, at the following address: Department of Housing and Urban Development, Community Planning and Development Division, 26 Federal Plaza, New York, New York, 10278–0068, Attention: Joseph D'Agosta, Director. Proposals may not be sent by facsimile.

FOR FURTHER INFORMATION CONTACT: Kate Brennan, Office of Community Planning and Development, 451 Seventh Street SW., Washington DC 20410–7000, telephone (202) 708–1234 (voice) or (202) 708–2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

A. Introduction

This Request for Proposals (RFP) solicits proposals to receive assignment of and to assume the obligations of the Recipient under Innovative Demonstration Program Project No. NY36I94–0628, a funded project in New York City designed to serve homeless persons in the Midtown area, in particular the many homeless persons who reside in or near Grand Central Station. The specific responsibilities under the grant are summarized in section C ''Scope of Work.'' HUD will consent to the assignment to and assumption by the selectee, however, the assignment and assumption agreement will be between the original Recipient and the selectee. The term of the assigned grant shall be the term remaining from the original two year grant, which as of the date of publication is approximately 12 months.

The additional sections of this RFP are:

B. Funding
C. Scope of Work
D. Proposal Contents
E. Evaluation Factors
F. Contract Award

Note: An original and one copy of the proposal are due no later than December 18, 1995, at the following address: Department of Housing and Urban Development, Community Planning and Development Division, 26 Federal Plaza, New York, New York, 10278–0068, Attention: Joseph D'Agosta, Director. Proposals may not be sent by facsimile.

B. Funding

Funding will be approximately $480,000, which represents the remaining amount awarded under Project Number NY36I94–0628.

C. Scope of Work

The selected proposal will operate a private shelter bed initiative and a start up loan program as described in the original application, Project Number NY36I94–0628. The activities include: (1) developing transitional housing programs in cooperation with churches and synagogues in the metropolitan New York city area, in particular in the area of Grand Central Station, that are interested in helping move homeless persons to independent living, but that may lack the capacity or funding to

undertake this; and (2) a ''loan'' program to provide funds to homeless persons residing in this same area, to assist in their permanent housing search. The loans could be used for such things as security deposits and first month's rent and be paid back in cash or through volunteer work in the organization's homeless facility.

Copies of the original application and grant agreement are available from the Community Planning and Development Division of the HUD New York Field Office on (212) 264–2885. Written requests may be addressed to the attention of Joseph D'Agosta, Director, Community Planning and Development Division, US Department of Housing and Urban Development, 26 Federal Plaza, New York, NY, 10278–0068.

The proposal selected under this RFP will operate under the assigned grant, which is subject to the HUD Demonstration Act of 1993 (Pub. L. 103–120, signed on October 27, 1993) and the Notice of Fund Availability (NOFA) published December 21, 1993 in the Federal Register, which governed the original competition. Copies of both will also be available from the Field Office for review.

D. Proposal Contents

The proposal must be submitted by a state, metropolitan city, urban county, unit of general local government, Indian tribe or a nonprofit organization, as defined in section 102(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302). Each proposal must include all information requested in this section. A newly-formed organization may substitute a description of the experience and knowledge of its principal officers and employees where a description of its own experience is requested below.

The following are required contents of a written proposal to be submitted no later than 21 days after publication in the Federal Register:

I. Description of experience. Submit a narrative description of experience in assisting homeless persons and in running programs similar to those proposed in the application. Also include a description of the qualifications of key staff who will be carrying out the program and a description of staff organization.

II. Proof of Eligibility. If the proposal is from a nonprofit it must contain either documentation showing that the applicant is a certified United Way member agency; or a copy of their IRS ruling providing tax-exempt status under Section 501(c)(3) of the IRS Code of 1986, as amended.

III. Project description. Submit a narrative description of the organization's specific plan for carrying out the proposed activities. Include specific designs for (1) enlisting churches and synagogues in the development of transitional housing and the type of assistance your organization will provide to them in the development of such housing, and (2) developing a loan program that meets the needs of homeless persons seeking permanent housing. The project described should be based as closely as possible on the original application.

IV. Certifications. Submit the certifications printed here as Appendix A to this RFP. The document may be removed or photocopied (do not re-type), and must be signed by the official authorized to act on behalf of the applicant.

E. Evaluation Factors

A proposal will be selected based on the extent to which the prospective assignee demonstrates in the written submission the capacity to implement a program that achieves the purpose of this RFP including the speed with which the project and activities will become operational.

The following are the factors for evaluation which will receive equal consideration in the selection process:

(1) *Capacity of the organization.* The extent to which the organization demonstrates that it, or its subcontractors, has the capacity to carry out the proposed activities based on (a) the past experience of the organization in the proposed activities; and (b) the qualifications of key staff.

(2) *Timeliness.* The extent to which the organization demonstrates that the proposed activities will begin in a timely manner and will be carried out efficiently and expeditiously.

(3) *Relevance of project activities.* (a) The extent to which the proposed project mirrors the activities as described in the original application; and (b) the overall quality of the project.

F. Contract Award

Award will be made to the proposal which HUD determines is most responsive to the evaluation factors above. HUD reserves the right to reject all proposals.

Dated: November 20, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Appendix A—Applicant Certifications

The Applicant hereby assures and certifies that:

1. It will comply with:

a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and regulations pursuant thereto (Title 24 CFR part I), which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance, and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

b. The Fair Housing Act (42 U.S.C. 3601–19) and the implementing regulations at 24 CFR part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing. For Indian tribes, it will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), instead of Title VI and the Fair Housing Act and their implementing regulations.

c. Executive Order 11063 on Equal Opportunity in Housing, as amended by Executive Order 12259 (3 CFR 1958–1963 Comp. p. 652 and 3 CFR, 1980 Comp. 307) and the implementing regulations at 24 CFR part 107 which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with Federal financial assistance.

d. Executive Order 11246 on Equal Opportunity in Employment (3 CFR 1964–1965, Comp., p. 339) and the implementing regulations at 41 CFR part 61, which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in Section 130.5 of HUD regulations the equal opportunity clause required by Section 130.15(b) of the HUD regulations.

e. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701(u)), and the implementing regulations at 24 CFR part 135, which require that to the greatest extent feasible, employment, training and contract opportunities arising in connection with the expenditure of HUD assistance covered by section 3 be given to the low-income persons and the business concerns identified in the part 135 regulations.

f. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and the implementing regulations at 24 CFR part 8, which prohibit discrimination based on handicap in Federally-assisted and conducted programs and activities.

g. The Age Discrimination Act of 1975 (42 U.S.C. 6101–07), as amended, and the implementing regulations at 24 CFR part 146, which prohibit discrimination because of age in projects and activities receiving Federal financial assistance.

h. Executive Orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and women.

If persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for assistance are unlikely to be reached, it will establish additional procedures to ensure that interested persons can obtain information concerning the assistance.

i. The reasonable modification and accommodation requirements of the Fair Housing Act and, as appropriate, the accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, as amended.

2. It will provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing an ongoing drug-free awareness program to inform employees about—

(1) the dangers of drug abuse in the workplace;

(2) the grantee's policy of maintaining a drug-free workplace;

(3) any available drug counseling, rehabilitation, and employee assistance programs; and

(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a;

d. Notifying the employee in the statement required by paragraph a that, as a condition of employment under the grant, the employee will—

(1) abide by the terms of the statement; and

(2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d(2), with respect to any employee who is so convicted—

(1) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a, b, c, d, e, and f;

h. Providing the street address, city, county, state, and zip code for the site or sites where the performance of work in connection with the grant will take place. For some applicants who have functions carried out by employees in several departments or offices, more than one location may need to be specified. It is further recognized that States and other applicants who become grantees may add or change sites as a result of changes to program activities during the course of grant-funded activities. Grantees, in such cases, are required to advise the HUD Field Office by submitting a revised ''Place of Performance'' form. The period covered by the certification extends until all funds under the specific grant have been expended.

3. It will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations at 49 CFR part 24.

4. It will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations at 24 CFR part 35.

5. It will (i) not enter into a contract for, or otherwise commit HUD or local funds for, acquisition, rehabilitation, conversion, lease, repair, or construction of property to provide housing under the program, prior to HUD's completion of an environmental review in accordance with 24 CFR part 50 and HUD's approval of the application; (ii) supply HUD with information necessary for HUD to perform any applicable environmental review when requested; and (iii) carry out mitigating measures required by HUD or ensure that alternate sites are utilized.

6. The applicant certifies that:

a. No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

c. The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and

cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and of more than $100,000 for each such failure.

7. For private nonprofit applicants, the applicant certifies that members of its Board of Directors serve in a voluntary capacity and receive no compensation, other than reimbursement for expenses, for their services.

8. The applicant certifies that it and its principals (see 24 CFR 24.105(p)):

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (see 24 CFR 24.110) by any Federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in (b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the applicant is unable to certify to any of the statements in this certification, the applicant shall attach an explanation behind this page.

Signature of Authorized Certifying Official:

_____

Title:

_____

Applicant:

_____

Date:

[FR Doc. 95–28946 Filed 11–24–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. (PSDT) on Saturday, December 2, 1995, at the County of Inyo Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including the preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Ms. Sue Kunitomi Embrey, Chairperson
Mr. William Michael, Vice Chairperson
Mr. Keith Bright
Ms. Martha Davis
Mr. Ronald Izumita
Mr. Gann Matsuda
Mr. Vernon Miller
Mr. Mas Okui
Mr. Glenn Singley
Mr. Richard Stewart

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) Review of the draft park General Management Plan.

(3) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(4) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after January 31, 1996. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, P.O. Box 426, Independence, California 93526.

Dated: November 7, 1995.

Ross R. Hopkins,

Superintendent, Manzanar National Historic Site.

[FR Doc. 95–28885 Filed 11–24–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32803]

Belvidere & Delaware River Railway—Acquisition and Operation Exemption—Consolidated Rail Corporation

Belvidere & Delaware River Railway, a noncarrier, has filed a notice of exemption to acquire from Consolidated Rail Corporation and operate approximately 16.96 miles of the former Delaware Secondary Track between milepost 50.60 at Phillipsburg and milepost 33.64 at Milford, in Warren and Hunterdon Counties, NJ. The parties expected to consummate the transaction on November 10, 1995, the effective date of the exemption.

Any comments must be filed with the Commission and served on: John K. Fiorilla, Watson, Stevens, Fiorilla & Rutter, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

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: November 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28641 Filed 11–24–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–57 (Sub–No. 37X)]

Soo Line Railroad Company—Abandonment Exemption—in Milwaukee County, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the regulatory requirements of 49 U.S.C. 10903–04 the abandonment by Soo Line Railroad Company (Soo) of 0.56 miles of rail line in Milwaukee, Milwaukee County, WI, subject to the standard

employee protective conditions and to an environmental condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 27, 1995. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by December 7, 1995; petitions to stay must be filed by December 12, 1995; requests for a public use condition must be filed by December 18, 1995; and petitions to reopen must be filed by December 22, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–57 (Sub-No. 37X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Larry D. Starns, Esq., 1000 Soo Line Building, 105 South 5th Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [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: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: November 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28855 Filed 11–24–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated August 10, 1995, and published in the Federal Register on August 17, 1995, (60 FR 42904), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
Difenoxin (9168)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Division Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 16, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–28877 Filed 11–24–95; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By Notice dated June 29, 1995, and published in the Federal Register on July 6, 1995, (60 FR 35226), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

A registered manufacturer filed a comment requesting that Penick's application be denied for consideration of the public interest and United States' international commitments. The commentor further stated that there is no evidence that Penick is in business or capable of entering the business of importing controlled substances. The Drug Enforcement Administration (DEA) has conducted inspections of Penick and found that the firm has complied with the public interest requirements of the Controlled Substances Act (CSA). Penick's current application was filed to renew an importer registration which the firm has maintained for several years and under which the firm has imported controlled substances in the past in conformance with the CSA and DEA regulations. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: November 16, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–28878 Filed 11–24–95; 8:45 am]

BILLING CODE 4410–09–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7 and 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *City of Minot, North Dakota,* Civil Action No. *A4–95–141,* was lodged on October 26, 1995, with the United States District of North Dakota, Northwestern Division. A complaint was also filed on October 26, 1995. The State of North Dakota (''State'') is a party to the Consent Decree.

The proposed consent decree requires the former Site operator, the City of Minot Landfill Site (''Site'') located in Ward County, North Dakota, as required by the Record of Decision signed by the U.S. Environmental Protection Agency (''EPA'') on or about June 21, 1993, including (a) implementing institutional controls to prohibit construction on the landfill and the use of water beneath the landfill or in the immediate vicinity of the landfill for drinking water purposes; (b) extracting and treating landfill leachate in the City's wastewater treatment facility; (c) consolidating contaminated soil in the vicinity of leachate seeps under the landfill cap and to improve the cap to limit precipitation infiltration and to control stormwater runoff; (d) monitoring ground-water to detect future releases of contaminants to the ground water; and (e) collecting and dispersing landfill gas by using an active collection system and a tall stack; (2) to pay the United States $100,000.00 in reimbursement of past and future response costs; and (3) to pay, upon demand by the State after the entry of the Consent Decree, those

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

response costs incurred by the State in a manner not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, to conduct Site oversight. The North Dakota Department of Health and EPA have agreed to share oversight of certain of the City's work associated with the remedy.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Minot, North Dakota,* DOJ Ref. #90–11–3–951.

The proposed consent decree may be examined at the Office of the United States Attorney, District of North Dakota, 219 Fed. Bldg. & U.S. Cthse., 655 1st Ave. No., Fargo, North Dakota 58102; the Region VIII Office of the Environmental Protection Agency, 999 18th Street—Suite 500, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the proposed decree and attachments, please refer to the referenced case and enclose a check in the amount of $46.00 (25 cents per page reproduction costs), for each copy. The check should be made payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28762 Filed 11–24–95; 8:45 am]

BILLING CODE 4410–01–M

Office of Juvenile Justice and Delinquency Prevention

[OJP Number 1070]

Cancellation of the Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

November 21, 1995.

AGENCY: Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of cancellation of the meeting.

SUMMARY: The meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention announced on November 15, 1995 (60 FR 57456) and scheduled to take place in the District of Columbia, beginning at 1:00 p.m. on Tuesday, November 28, 1995, and ending at 3:00 p.m. on November 28, 1995 is hereby canceled. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at a later date to be announced by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP).

The point of contact at OJJDP is Gina Wood, Director, Concentration of Federal Efforts Program who can be reached at (202) 616–9159.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 95–28949 Filed 11–24–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations;

AGENCY: Hazardous Waste Operations and Emergency Response (OMB No. 1218–0202).

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the paperwork requirements of 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response (HAZWOPER).

DATES: Written comments must be submitted on or before January 26, 1996.

Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–95–2, U.S. Department of Labor, Room N–2625, 200 Constitution Ave, NW, Washington, DC 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Anne C. Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–8148. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies, contact the Labor New Bulletin Board (202) 219–4784; or OSHA's WebPage on Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Administration (OSHA) currently has approval from the Office of Management and Budget (OMB) for certain information collection requirements contained in 29 CFR 1910.120. That approval will expire on June 30, 1996 unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval.

As part of OMB's and OSHA's continuing paperwork reduction effort, OSHA seeks to reduce the paperwork burden hours in 29 CFR 1910.120 based

upon input from parties interested in the regulatory scope of that regulation. The purpose of this notice is to solicit public comment on OSHA's existing paperwork burden estimates from those interested parties and to seek public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's existing estimates, which are based upon information available during rulemaking, and to comment on their accuracy or appropriateness in today's workplace situation. OSHA bases its existing estimates upon information made available to the Agency during the initial rule making effort for 29 CFR 1910.120 (August 10, 1987; 52 FR 29620) and believes that this data may be outdated.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response.

Type of Review: Extension of existing approval with one typographic correction. The current total burden hours should be 18,726,849 instead of 18,726,049. The eight in the hundreds spot was read previously as a zero.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Hazardous Waste Operations and Emergency Response (29 CFR 1910.120).

OMB Number: 1218–0202 (Previously 1218–0138).

Agency Number: Docket No. ICR–95–2.

Frequency: On occasion.

Affected Public: Business or other for-profit, Federal government, and State, Local or Tribal governments.

Number of respondents: 35,118.

Estimated Time Per Respondent: Varies.

Total Estimated Cost: $374,536,981.00.

Total Burden Hours: 18,726,849.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request: they will also become a matter of public record.

Dated: November 20, 1995.

Thomas H. Seymour,

Acting Director, Director of Safety Standards Programs.

[FR Doc. 95–28861 Filed 11–24–95; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–10031]

Proposed Class Exemption To Permit Certain Authorized Transactions Between Plans and Parties in Interest

AGENCY: Pension and Welfare Benefits Administration (PWBA), Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code). The proposed class exemption would apply to certain prospective transactions between employee benefit plans and parties in interest where such transactions are specifically authorized by the Department and are subject to terms, conditions and representations which are substantially similar to exemptions previously granted by the Department. If granted, the proposed exemption would affect plans, participants and beneficiaries of such plans and certain persons engaging in such transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before January 11, 1996.

ADDRESSES: All written comments (at least three copies) and requests for a public hearing should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (Attn: D–10031). Comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U. S. Department of Labor, room N–5638, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams, Mr. Ronald Willett, or Mr. Louis Campagna, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U. S. Department of Labor, telephone (202) 219–8971 (This is not a toll-free number.); or Mr. William Taylor, Plan Benefits Security Division, Office of Solicitor, U. S. Department of Labor (202) 219–4592. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed class exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of ERISA and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code), by reason of section 4975(c)(1) (A) through (E) of the Code.

The Department is proposing the class exemption on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, (55 FR 32836, August 10, 1990).[1]

Paperwork Reduction Act Analysis

The collection of information contained in this proposed class exemption has been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995. 44 U.S.C. 3507(d). For copies of the OMB submission, contact Mrs. Theresa O'Malley, U.S. Department of Labor, OASAM/DIRM, Room N–1301, 200 Constitution Ave. NW, Washington, D.C. 20210, 202–219–5095 or via internet to tomalley@dol.gov. Comments are solicited on the Department's need for this information, specifically to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Persons wishing to comment on the collection of information should direct their comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, NEOB, Washington, D.C. 20503, Attn: Desk Officer for PWBA. Comments must be filed with the Office of Management and Budget within 60 days of this publication. A

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Department: Mrs. Theresa O'Malley, U.S. Department of Labor, OASAM/DIRM, Room N–1301, 200 Constitution Ave. NW, Washington, D.C. 20210. For further information, contact Gerald B. Lindrew at 202–219–4782.

Title: Class Exemption To Permit Certain Authorized Transactions Between Plans and Parties in Interest

Summary: Certain parties in interest to ERISA covered pension and welfare benefit plans have the opportunity to seek approval on an accelerated basis of otherwise prohibited transactions by providing the Department and interested persons with information demonstrating that the proposed transaction is substantially similar to at least two individual exemptions previously granted by the Department, and in some cases show that the interests of the participants and beneficiaries are adequately represented and protected by an independent fiduciary.

Needs and Uses: ERISA requires that the Department make a finding that the proposed exemption meets the statutory requirements of section 408(a) before granting the exemption. The Department therefore finds it necessary to receive certain information from the applicants, and that participants and beneficiaries receive notice and an opportunity to comment on the proposed transaction.

Respondents and proposed frequency of response: The Department staff estimates that approximately 25 applicants will seek to take advantage of this class exemption in any given year. The respondents will be plans and parties in interest to plans.

Estimated annual burden: Based on past experience, the staff believes that none of the materials required to be submitted under this exemption will be prepared by the respondents; rather, the respondents are expected to contract with service providers such as attorneys, accountants, and third-party administrators to prepare the materials. Therefore, the Department asks that one hour be inserted as the estimated burden, in light of the current requirements that time spent by service providers not be included in the hourly burden estimate. The annual cost of using service providers for this collection of information is estimated to be $19,537.50.

Background

The Department is proposing the class exemption contained in this notice as part of a continuing effort to facilitate the administration of the rules for proposing and granting exemptions from the prohibited transactions provisions of ERISA. The rules set forth in section 406 of ERISA prohibit various transactions between employee benefit plans covered by title I of ERISA and certain related parties, unless a statutory or administrative exemption applies to the transaction. These related parties, such as plan fiduciaries, sponsoring employers, unions and service providers are defined as parties in interest in section 3(14) of ERISA, and, in the absence of an exemption, may not engage in transactions described in section 406 of ERISA with a plan.

Specifically, section 406(a)(1) prohibits a fiduciary of a plan from causing the plan to engage in a transaction that constitutes a direct or an indirect: sale, exchange or leasing of any property between the plan and a party in interest; lending of money or other extension of credit between the plan and a party in interest; furnishing of goods, services or facilities between the plan and a party in interest; transfer to, or use by or for the benefit of a party in interest of any assets of the plan or acquisition on behalf of the plan of any employer security or real property in violation of section 407(a) of ERISA. Section 406(a)(2) provides that no fiduciary who has authority or discretion to control or manage plan assets shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a) of ERISA. Section 406 (b)(1) and (b)(2) prohibits a fiduciary, with respect to a plan, from dealing with the assets of the plan in his own interest or for his own account; and acting in his individual capacity or in any other capacity in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of the participants or beneficiaries. In addition, such transactions that involve plans described in section 4975(e)(1) of the Code are generally subject to taxation under section 4975 of the Code.

In the past, the Department has frequently exercised its statutory authority under section 408(a) of ERISA to grant both individual and class exemptions from the restrictions imposed by section 406 of ERISA where it has been able to find that the statutory criteria have been met.[2] This process has been helpful in providing exemptive relief for transactions which were prohibited, but were otherwise in the interests of the plans, participants and beneficiaries.

The Department has promulgated an exemption procedure[3] which provides, among other things, that an exemption will not be granted until a notice of pendency has been published in the Federal Register, and interested persons have been given an opportunity to comment on the proposed transaction. Following consideration of the entire record, the Department then makes its final determination whether to grant the exemption. If the Department contemplates not granting the requested exemption, the procedure also provides an applicant with the right to a conference.

Typically, the Department grants individual exemptions for specific transactions involving particular plans and parties in interest. Such exemptions are generally made at the request of the parties involved. In certain cases, however, the Department believes that an exemption applicable to a class of transactions would be appropriate in order to eliminate the need for individual exemptions.

In this regard, the Department granted Prohibited Transaction Exemption (PTE) 79–15 to permit parties in interest to engage in transactions or activities that are specifically authorized or required, prior to the occurrence of such transactions or activities, by a court order of the United States District Court, provided that the transaction is specifically described in such order or settlement, and the Secretary of Labor or the Internal Revenue Service is a party to the litigation.[4] PTE 79–15 was granted in recognition of the fact that under these circumstances the court has the benefit of the views of the Department and the Internal Revenue Service as to the propriety of rendering a judgment which approves a settlement contemplating transactions which might be prohibited under ERISA and the Code.

The Department recently granted PTE 94–71 to permit parties to engage in prospective transactions or activities which are specifically authorized by a non-judicial settlement resulting from an investigation of a plan by the Department.[5] The exemption recognizes

[2] Section 408(a) of ERISA provides, in part, that the Department may not grant an exemption unless a finding is made that such 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 such plan.

[3] See 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

[4] 44 FR 26979 (May 8, 1979).

[5] 59 FR 51216 (October 7, 1994).

that in authorizing a transaction that would otherwise be prohibited as part of a settlement, the Department will give appropriate consideration to whether such transaction is in the interests of plan participants and beneficiaries.

Based on its experience in considering exemption applications for over twenty years, the Department has observed that many of the applications present routine transactions involving terms, conditions and circumstances which are substantially similar to those described in previously granted individual exemptions. In fact, many exemption applicants have made it a practice to consult previously granted exemption files in the preparation of their submissions. Such applicants often submit applications containing nearly identical transactions, terms and conditions to those previously granted. Since the enactment of ERISA, the Department has exempted a large number of recurring transactions, including loans, leases and sales of real property. As a result, standard terms and conditions have developed over time which assure that the transaction is protective of the plan's interests.

The Department believes that further action would be appropriate in order to expedite consideration of those routine transactions which are similar to those that have been previously considered by the Department in prior exemption proceedings, without sacrificing the interests of the plan participants and beneficiaries. Accordingly, the exemption proposed in this notice would be available to the party proposing to engage in a prohibited transaction, if the party can demonstrate to the Department that such transaction and the material terms, conditions and representations therein are substantially similar to at least two individual exemptions previously granted by the Department.

Discussion of the Proposed Exemption

Proposed Conditions

The proposal contains conditions, as discussed below, which the Department views as necessary to support a finding that the proposed exemption meets the statutory standards of section 408(a) of ERISA.

Under section I of the proposed exemption, relief is provided for transactions, as discussed below, from certain of the restrictions described in section 406(a) of ERISA. In this regard, section I(a) requires that the transaction be substantially similar to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions as requested by the party, within the 60 month period ending on the date a written submission is filed. ''Substantially similar'' is defined in section IV(a) as alike in all material respects as determined by the Department in its sole discretion.

Section I(b) of the proposed exemption requires that there be little, if any, risk of abuse or loss to the plan as a result of the transaction. Section I(c) further provides that prior to the execution of a transaction, the authorizing requirements of section III must be satisfied (as discussed below). The Department notes that, in light of the broad scope of relief provided under the proposal, the class exemption is only available with respect to prospective transactions.

Under section II of the proposal, additional relief is provided from certain of the restrictions described in sections 406(b)(1) and 406(b)(2) of ERISA provided that: (a) the transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and which provided relief from the same restrictions as requested by the party, within the 60 month period ending on the date of filing of the written submission; (b) there is little, if any, risk of abuse or loss to the plan as a result of the transaction; and (c) prior to its execution, the transaction has met the requirements described in section III (as discussed below).

In considering the availability of this proposed class exemption, the party who is to engage in the transaction should carefully determine whether the contemplated transaction contains terms and conditions which closely parallel the transaction delineated in the prior exemptions granted by the Department and the material facts and representations supporting such exemptions. Further, the party seeking to take advantage of the proposed class exemption should determine whether the relief provided from section 406 by the prior exemptions granted by the Department is identical to the relief necessary for the contemplated transaction.

In addition, section II (d) and (e) require that, prior to execution of such transaction, an independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries, and later represents the interests of the plan in the execution of the transaction. Under section II(f) of the proposal, for those transactions that are continuing in nature, such as leases and loans, the independent fiduciary must: (1) represent the interests of the plan for the duration of the transaction; (2) monitor the transaction on behalf of the plan; (3) enforce compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and (4) ensure that the transaction remains in the interests of the plan.[6]

The Department notes that the independent fiduciary should be knowledgeable and experienced with respect to the type of transaction. The Department encourages parties to consider, when retaining an independent fiduciary, any unique qualifications of the independent fiduciaries utilized in the substantially similar transactions.

Section III of the proposal contains the authorization requirements for a transaction. In view of the broad scope of relief provided under the proposal, the Department believes that it must participate in the proceeding in order to determine in its sole discretion whether prior to its execution a proposed transaction is substantially similar to previously exempted transactions and presents little if any risk of abuse or loss to the plan. Section III(a)(1) requires that the party who will be engaging in such transaction file a written submission with the Department containing a specific statement that the party intends to demonstrate compliance with the conditions of the class exemption. The written submission must clearly indicate to the Department that it is made pursuant to the class exemption rather than under the Department's procedures for considering individual exemptions.[7]

Section III(a)(2) requires that the submission include all information that is otherwise required to be submitted with an individual exemption application. This condition will permit such submission to be considered under the Department's exemption procedures in the event that Department is unable to conclude from the written submissions that the conditions of the class exemption would be met. Further, this condition will assure a full and comprehensive file upon which the Department can base its conclusions

[6] The Department expects that the written submission referred to section III will include specific information regarding the methods proposed by the independent fiduciary for: monitoring the transaction; enforcing compliance with all the conditions and obligations imposed on the parties dealing with the plan; and ensuring that the transaction remains in the interests and protective of the participants and beneficiaries of the plan.

[7] See 29 CFR part 2570, subpart B.

concerning the availability of this class exemption.

Under section III(a)(3), the party who will be engaging in the transaction must demonstrate that the proposed transaction presents little or no opportunity for abuse or risk of loss by the plan given the terms and conditions of the transaction. Section III(a)(4) requires that the party compare the proposed transaction to those previously exempted transactions identified by the party as substantially similar. In this regard, any comparison must include a description of any material differences between the proposed transaction and the identified exemptions. The Department notes that it is the party's burden to provide the Department with the citations to the identified exemptions.

Section III(a)(5) requires that a complete and accurate draft of the notice which will be distributed to interested persons be submitted to the Department. The purpose of the notice requirement is to afford interested persons with the opportunity to provide the Department with relevant information to assist the Department in its consideration of the proposed transaction. ''Notice'' is defined in section IV(b) as a written notification to interested persons which includes an objective description of the transaction, the approximate date on which the transaction will occur, a statement that the proposed transaction has met the requirements for tentative authorization under this class exemption, a statement apprising interested persons of their right to comment, and the Federal Register citations for the prior exemptions identified by the party as substantially similar to the contemplated transaction. The Department cautions that a notice that does not objectively and accurately characterize the transaction and its material terms and conditions will fail to comply with section IV(b) of the proposal. The notice must also contain a statement directing interested persons to submit comments to the Department for consideration.

With respect to a transaction described in section II of this exemption, section III(b) provides that the written submission must also contain the following additional information: (1) the identity of the independent fiduciary; (2) a description of such fiduciary's independence from the parties in interest involved in the subject transaction; (3) a statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interests and protective of the participants and beneficiaries of the plan; (4) an agreement by the independent fiduciary to represent the interests of the plan; and (5) a description of the procedure for replacement of the independent fiduciary, if necessary, during the term of the transaction.

The written submissions will be closely reviewed by the Department to ensure that the conditions of this class exemption are met. In this regard, the Department notes that the burden is on the party who is to engage in the transaction to demonstrate compliance with the conditions of the class exemption. If a party fails to do so, the Department will notify the party that the transaction is not eligible for authorization under the terms of the class exemption, and the written submission will be considered pursuant to the Department's exemption procedure for individual exemptions.

The proposal requires, under section III(c), that the transaction meet the requirements for tentative authorization. ''Tentative authorization'' is defined under section IV(c) as occurring at the expiration of the forty-five day period following acknowledgement by the Department of the receipt of the written submission with respect to the proposed transaction, unless the Department has notified the party who is to engage in the transaction during this period that the transaction is not eligible for authorization under the terms of this class exemption.

Section III(d) provides that, following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons. The proposed exemption does not specify the manner in which written notice must be provided to interested persons. However, section III(d) requires that notice be given in a manner that is reasonably calculated to result in the receipt of such notice by interested persons. It is the responsibility of the party who is to engage in the transaction to promptly distribute notice after tentative authorization is obtained, because the 25 day comment period, as defined under section IV(e), will not commence until the notification to all interested persons is complete. It is also the responsibility of the party to inform the Department of the date upon which notification was completed. The notice must inform interested persons of the date of expiration of the comment period. Because the date of completion of the notification is within the control of the party who is to engage in the transaction, the expiration date of the comment period is thus dependent upon completion of notification. The Department expects the party who provides written notice to take this into account in determining the expiration date of the comment period.

In addition, section III(d) requires that the party who is to engage in the transaction resolve all substantive adverse comments submitted to the Department to the satisfaction of the Department. The term ''substantive adverse comments,'' as defined in section IV(f), means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department. The Department wishes to emphasize that the party who is to engage in the transaction must fully resolve those issues received during the comment period to the satisfaction of the Department.

''Final authorization'' is defined in section IV(d) as the end of the 5 day period immediately following the expiration of the comment period unless the Department notifies the party within that period that the transaction is not eligible for authorization, or the expiration of a period of time extending beyond the 5 day period as mutually agreed to by the Department and the party in order to resolve any substantive adverse comments submitted to the Department. The 5 day period between the expiration of the comment period and final authorization is intended to allow consideration by the Department of comments received within the 25 day comment period. If mutual agreement between the Department and the party who is to engage in the transaction is not reached regarding the period of time in which such comments must be resolved, the party will be notified that the transaction fails to comply with the conditions of the class exemption, and the written submission will be considered by the Department in accordance the Department's exemption procedures at 29 CFR 2570, subpart B.

In this regard, the Department will not consider a proposed transaction to satisfy the conditions of this proposed class exemption unless the material facts and representations contained in the written submission and in any materials and documents submitted in support of the written submission are true and complete. Accordingly, applicants are cautioned against engaging in transactions shortly after final authorization, since the Department may continue to receive comments for several days following expiration of the comment period. Such comments may potentially challenge the truth and/or completeness of the

original written submission and cause the Department to reexamine its previous determination that the proposed transaction had met the conditions of the proposal.[8]

The Department notes that the proposed exemption should not be construed as a substitute for compliance with the statutory requirements of ERISA and the Code. Individuals desiring to engage in any transaction which is prohibited under section 406 of ERISA, and which is not the subject of an existing statutory or administrative exemption (including as a result of failure to satisfy the terms of this class exemption) must seek exemptive relief in accordance with the Department's exemption procedure at 29 CFR 2570, subpart B. Lastly, the proposed exemption provides no relief for transactions entered into prior to final authorization as described in section IV(d).

The application of the exemption proposed in this notice may be illustrated by the following examples:

Example (1): An exemption application is submitted to the Department by applicant X, the sponsor of plan Y, for a lease of office space by plan Y to X. The transaction proposed is similar in all material respects to four other exemptions granted by the Department within the last five years. Applicant X, however, does not make a specific declaration that the application is submitted with the intention of demonstrating compliance with the class exemption, and there is no information which otherwise complies with sections I, II and III of the proposed class exemption. The application will be considered by the Department pursuant to individual exemption procedures unless the applicant amends its original written submission and provides the required information. At that point, the Department will acknowledge receipt of the written submission requesting expedited authorization under the class exemption proposal.

Example (2): In 1994, two exemptions were granted for loans by pension plans to Corporation A and Corporation B, respectively, the sponsoring employers. The loan to Corporation A was for $50,000. The loan to Corporation B was for $75,000. Among the conditions and material representations contained in both exemptions were the following: the loans would be approved and monitored by an independent fiduciary; the term of the loans could extend no more than five years; regular installment payments of principal and interest had to be made during the term; the collateral consisting of real property had to be maintained at all times at a loan-to-value ratio of at least 150 percent; and no more than 25 percent of the assets of the plan would be involved in loans to the sponsoring employer. In 1996, X Corporation makes a written submission pursuant to the class exemption with respect to a proposed loan from its plan. The proposed transaction, including the terms and conditions of the loan and the creditworthiness of the borrower, is substantially similar to the exemptions granted to Corporation A and Corporation B, except that the loan is for $400,000 and the term is seven years. X Corporation cites the previously granted exemptions in its submission and demonstrates that the 25 percent limitation on the amount of assets involved in loans to the employer would be met. These differences in dollar amounts and loan term would not cause the transaction to fail the ''substantially similar'' test under section I(a) and X's proposed transaction may be eligible for relief under the class exemption.

If, however, in addition to these differences (i.e., dollar amounts and loan term), the loan transaction proposed by X Corporation also included different repayment provisions requiring monthly payments of interest only during the loan term and a balloon payment of principal at the end of the term, the relief afforded by the class exemption would not be available because the terms of the proposed loan are not alike in all material respects within the meaning of section I(a) to the previous loan exemptions granted by the Department and cited by the applicant.

Example (3): In 1994, Investment Adviser X is granted a conditional exemption which permits plans for which it provides investment management services to purchase units of a limited partnership for which X is the general partner. In 1996, the assets of X are sold to Y. Y subsequently makes a written submission pursuant to the class exemption for the same transactions which were the subject of the exemption granted to X. In addition to the exemption granted to X, Y cites in its submission one other similar exemption granted by the Department within the last five years. The relief afforded by the exemption would be available because the terms and conditions of the transaction are substantially similar to previous exemptions granted by the Department.

Example (4): Firm C makes a written submission pursuant to the class exemption for the sale of property by its plan to C. Forty-five days elapse from the acknowledgment of the receipt of the submission by the Department without notification from the Department as to the availability of the class exemption for the proposed transaction. Pursuant to the exemption, C proceeds to distribute notice to interested persons. On the 24th day following completion of notice, the Department receives a comment from an interested person raising significant factual concerns regarding the sale. At this point, the Department and C can mutually agree, pursuant to section IV(d) of the exemption, to a date beyond the expiration of the 25 day comment period, at which time the comment must be resolved to the Department's satisfaction in order for the transaction to be authorized under the terms of the exemption. If the Department and C cannot agree to an extended date, the transaction will not receive final authorization and the exemption will not be available for such transaction.

Notice to Interested Persons

Because many participants, plans, fiduciaries and parties in interests with respect to plans could conceivably be considered interested persons, the only practical form of notice of the proposed exemption is publication in the Federal Register.

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 ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code to which the exemption does not expressly apply and the general fiduciary responsibility provisions of section 404 of ERISA. Section 404 requires, in part, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of ERISA. This exemption does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of ERISA and section 4975(c)(1)(F) of the Code.

(3) Before this exemption may be granted under section 408(a) of ERISA

[8] See 29 CFR 2570.49 (55 FR 32886, August 10, 1990).

and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of plans and of participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans.

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of other provisions of ERISA and 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.

(5) If granted, the proposed exemption will be applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address above and within the time period set forth above. Comments received will be made part of the record and will be available for public inspection at the above address.

Proposed Exemption

The Department has under consideration the granting of the following class exemption, under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990).

Section I—General Exemption. Effective (date of grant of this class exemption), a restriction described in section 406(a) of ERISA, and the taxes imposed by sections 4975 (a) and (b) of the Code, by reason of a parallel provision described in sections 4975(c)(1) (A) through (D) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan, provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60 month period ending on the date of filing of the written submission referred to in section III(a);

(b) There is little, if any, risk of abuse or loss to the plan as result of the transaction; and

(c) Prior to its execution, the transaction has met the requirements described in section III.

Section II—Specific Exemption. Effective (date of grant of this class exemption), a restriction described in sections 406(b)(1) and 406(b)(2) of ERISA, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of a parallel provision described in section 4975(c)(1)(E) of the Code, shall not apply to a transaction between a plan and a party in interest with respect to such plan provided the following conditions are met:

(a) The transaction is substantially similar (as defined in section IV(a)) to transactions described in at least two individual exemptions that were granted by the Department, and provided relief from the same restriction, within the 60 month period ending on the date of filing of the written submission referred to in section III(a);

(b) There is little if any risk of abuse or loss to the plan as a result of the transaction;

(c) Prior to its execution, the transaction has met the requirements described in section III;

(d) An independent fiduciary has reviewed the proposed transaction and determined that the transaction would be in the interests and protective of the plan and its participants and beneficiaries;

(e) The independent fiduciary represents the interests of the plan in the execution of the transaction; and

(f) If the transaction is continuing in nature, the independent fiduciary—

(i) represents the interests of the plan for the duration of the transaction and monitors the transaction on behalf of the plan;

(ii) enforces compliance with all conditions and obligations imposed on any party dealing with the plan with respect to the transaction; and

(iii) ensures that the transaction remains in the interests of the plan.

Section III—Authorization Requirements. The requirements for this section are met if:

(a) A written submission is filed with the Department with respect to the transaction which contains the following information:

(1) a separate written declaration by the party who is to engage in the transaction that the written submission is made with the intention of demonstrating compliance with the conditions of this class exemption;

(2) all information required to be submitted with an individual exemption application in accordance with the procedures set forth in 29 CFR 2570 subpart B;

(3) a specific statement demonstrating that the proposed transaction poses little, if any, risk of abuse or loss to the plan;

(4) a comparison of the proposed transaction to at least two substantially similar transactions which were the subject of individual exemptions granted by the Department within a sixty month period ending on the date of the filing of the written submission and an explanation as to why any differences should not be considered material for purposes of this exemption; and

(5) a complete and accurate draft of the notice (as defined in section IV(b)) prepared for distribution to interested persons and a description of the proposed method of distribution for such notice.

(b) With respect to transactions described in section II of this exemption, the written submission referred to in section (a) above contains the following additional information:

(1) the identity of the independent fiduciary;

(2) a description of such fiduciary's independence from the parties in interest involved in the subject transaction;

(3) a statement by the independent fiduciary containing an explanation as to why the subject transaction is in the interests and protective of the participants and beneficiaries of the plan(s) involved;

(4) an agreement by the independent fiduciary to represent the interests of the plan(s) involved in the transaction; and

(5) a description of the procedures for replacement of the independent fiduciary, if necessary, during the term of the transaction.

(c) The transaction meets the requirements for tentative authorization (as defined in section IV(c)) from the Department.

(d) Following tentative authorization, the party who is to engage in the transaction provides written notice (as defined in section IV(b)) to interested persons in a manner that is reasonably calculated to result in the receipt of such notice by interested persons, informs interested persons of the date of the expiration of the comment period, and resolves all substantive adverse comments (as defined in section IV(f)) to the satisfaction of the Department.

(e) The transaction meets the requirements for final authorization (as defined in section IV(d)).

Part IV: Definitions

(a) The term ''substantially similar'' means alike in all material respects as determined by the Department, in its sole discretion.

(b) The term ''notice'' means written notification to interested persons which includes—

(1) an objective description of the transaction, including all material terms and conditions,

(2) the approximate date on which the transaction will occur,

(3) a statement that the proposed transaction has met the requirements for tentative authorization under this exemption,

(4) a statement apprising interested persons of their right to comment to the Department on the proposed transaction, and

(5) the Federal Register citations for the prior exemptions identified by the party as substantially similar to the contemplated transaction.

(c) For purposes of this exemption, ''tentative authorization'' occurs upon the expiration of the forty-five (45) day period following an acknowledgement by the Department of receipt of the written submission with respect to the transaction under this exemption unless the Department has notified the party who is to engage in the transaction during that period that the transaction is not eligible for authorization under the terms of this exemption.

(d) For purposes of this exemption ''final authorization'' occurs upon the expiration of:

(1) the five (5) day period immediately following the comment period (as defined in section IV(e)), unless the Department notifies the party that the transaction is not eligible for authorization under the terms of this exemption, and

(2) if necessary in order to resolve any substantive adverse comments received by the Department from interested persons within the comment period, a period of time extending beyond the five day period immediately following the comment period as mutually agreed between the Department and the party.

(e) The term ''comment period'' means the twenty-five (25) day period following the completion of distribution of the notice to interested persons by the party who is to engage in the transaction.

(f) The term ''substantive adverse comments'' means those comments submitted by interested persons to the Department within the prescribed comment period which raise significant factual, legal or policy issues regarding the transaction as determined by the Department in its sole discretion.

Signed at Washington, D.C., this 21st day of November 1995.

Alan D. Lebowitz,

Deputy Assistant Secretary of Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–28909 Filed 11–24–95; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Grant Awards to Applicants for Funds To Provide Civil Legal Services to Eligible Low-Income Clients Beginning As Early As January 1, 1996, or As Soon Thereafter As Feasible, Consistent With Pending Congressional Appropriations

AGENCY: Legal Services Corporation.

ACTION: Announcement of Grant Awards.

SUMMARY: The Legal Services Corporation (LSC/Corporation) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients beginning as early as January 1, 1996, or as soon thereafter as feasible consistent with pending Congressional appropriations.

DATES: All comments and recommendations must be received on or before the close of business on December 27, 1995.

ADDRESSES: Office of Program Services, Legal Services Corporation, 750 First Street, N.E., 11th Floor, Washington, D.C. 20002–4250.

FOR FURTHER INFORMATION CONTACT: Patricia M. Hanrahan, Office of Program Services, 202/336–8846.

SUPPLEMENTARY INFORMATION: Pursuant to the Corporation's announcement of funding availability on September 21, 1995 (60 FR 48951), the LSC will award funds to one or more of the following organizations to provide civil legal services in the indicated service areas.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
LGL SVCS OF NORTH-CENTRAL ALABAMA	AL–2.
LGL. SVCS. OF METRO BIRMINGHAM, INC	AL–3.
LSC OF ALABAMA	AL–1, MAL.
ALASKA LEGAL SERVICES CORPORATION	AK–1, NAK–1.
COCONINO LEGAL AID	AZ–2.
DNA-PEOPLE'S LEGAL SERVICES, INC	AZ–4.
PINAL & GILA COUNTIES LAS	AZ–1, NAZ–1.
PAPAGO LEGAL SERVICES, INC	NAZ–3.
SOUTHERN ARIZONA LEGAL AID, INC	AZ–4, NAZ–4.
COMMUNITY LEGAL SERVICES	AZ–3, NAZ–2, MAZ.
OZARK LEGAL SERVICES	AR–2.
L.S. OF NORTHEAST ARKANSAS, INC	AR–3.
WESTERN ARKANSAS LEGAL SERVICES	AR–4.
EAST ARKANSAS LEGAL SERVICES	AR–5.
CENTER FOR ARKANSAS LEGAL SERVICES	AR–1, AR–6, MAR.
CENTRAL CALIFORNIA LEGAL SERVICES	CA–3.
GREATER BAKERSFIELD LEGAL ASST INC	CA–2.
LEGAL AID FOUNDATION OF LONG BEACH	CA–4.
LA FOUNDATION OF LOS ANGELES	CA–5.
LEGAL AID SOCIETY OF ALAMEDA COUNTY	CA–7.
CHANNEL COUNTIES LEGAL SERVIC ASSOC	CA–8.
SAN FERNANDO VALLEY NEIGHBORHOOD LS	CA–9.
LEGAL SERVICES PROGRAM	CA–10.
LAS OF SAN MATEO COUNTY	CA–11.
CONTRA COSTA LS FOUNDATION	CA–12.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
INLAND COUNTIES LEGAL SERVICES, INC	CA–13.
LEGAL SERVICES OF NORTHERN CALIF	CA–14.
LEGAL AID SOCIETY OF SAN DIEGO, INC	CA–15.
SAN FRAN NEIGHBORHOOD LA FOUNDATION	CA–17.
COMMUNITY LEGAL SERVICES, INC	CA–18.
LEGAL AID OF MARIN	CA–6, CA–19.
LEGAL AID SOCIETY OF ORANGE COUNTY	CA–20.
MONTEREY COUNTY LEGAL SERVICES	CA–21.
TULARE/KINGS COUNTIE LEGAL SERVICES	CA–22.
LEGAL AID SOC OF SANTA CRUZ CTY	CA–23.
REDWOOD LEGAL ASSISTANCE	CA–24.
CALIFORNIA INDIAN LEGAL SERVICES	CA–1, NCA–1.
CALIFORNIA RURAL LEG ASSTANCE, INC	CA–2, CA–16, CA–21, CA–22, MCA.
PIKES PEAK LEGAL SERVICES	CO–1.
LAS OF METROPOLITAN DENVER, INC	CO–3.
PUEBLO COUNTY LEGAL SERVICES, INC	CO–4.
COLORADO RURAL LEGAL SERVICES, INC	CO–2, NCO–1, MCO.
STATEWIDE LS OF CONNECTICUT, INC	CT–1, CT–2, CT–3, MCT.
COMMUNITY LEGAL AID SOCIETY, INC	DE–1.
LEGAL SERVICES CORP OF DELAWARE, INC	DE–1.
NEIGHBORHOOD L.S. PROG. OF THE D.C	DC–1.
CENTRAL FLORIDA LEGAL SERVICES, INC	FL–1.
LA SERVICE OF BROWARD COUNTY, INC	FL–2.
JACKSONVILLE AREA LEGAL AID	FL–4.
LS OF GREATER MIAMI, INC	FL–5.
LEGAL SERVICES OF NORTH FLORIDA, INC	FL–6.
GREATER ORLANDO AREA LEGAL SERVICES	FL–7.
BAY AREA LEGAL SERVICES, INC	FL–8.
WITHLACOOCHEE AREA LEGAL SVC., INC	FL–9.
THREE RIVERS LEGAL SERVICES, INC	FL–10.
NORTHWEST FLORIDA LGL SERVICES, INC	FL–11.
GULFCOAST LEGAL SERVICES, INC	FL–12.
FLORIDA RURAL LEGAL SERVICES, INC	FL–3, MFL.
ATLANTA LEGAL AID SOCIETY	GA–1.
GEORGIA LEGAL SERVICES PROGRAM	GA–2, MGA.
NATIVE HAWAIIAN LEGAL CORPORATION	NHI–1.
LEGAL SERVICES OF HAWAII	HI–1, MHI.
IDAHO LEGAL AID SERVICES	ID–1, NID–1, MID.
COOK COUNTY LEGAL ASSISTANCE FOUND	IL–1.
JONES, WARE & GRENARD	IL–2.
LAND OF LINCOLN LA FOUNDATION, INC	IL–3.
PRAIRIE STATE LEGAL SERVICES, INC	IL–4.
WEST CENTRAL ILLINOIS LEGAL ASSIST	IL–5.
LGL ASSIST FOUNDATION OF CHICAGO	IL–2, MIL.
LEGAL SERVICES OF MAUMEE VALLEY	IN–1.
LEGAL SERVICES OF NORTHWEST INDIANA	IN–2.
LGL SCVS PROGRAM OF NORTHERN INDIAN	IN–4.
LGL SVCS ORGANIZATION OF INDIANA	IN–3, MIN.
LAS OF POLK COUNTY IOWA, INC	IA–2.
LEGAL SERVICES CORP. OF IOWA	IA–1, MIA.
KANSAS LEGAL SERVICES	KS–1, MKS.
NORTHERN KENTUCKY LEGAL AID SOCIETY	KY–1.
LEGAL AID SOCIETY	KY–2.
CENTRAL KY LEGAL SERVICES, INC	KY–3.
NORTHEAST KENTUCKY LEGAL SERVIC, INC	KY–4.
CUMBERLAND TRACE LEGAL SERVICES, INC	KY–6.
WESTERN KENTUCKY LEGAL SERVICES, INC	KY–7.
APPA RESEARCH & DEFENSE FUND OF KY	KY–5, MKY.
CAPITAL AREA LEGAL SERVICES CORP	LA–1.
DELE A ADEBAMIJI & ASSOCIATES	LA–1.
MARK S. SMITH	LA–1.
SW LOUISIANA LGL SVC SOCIETY, INC	LA–2.
LILLIAN T DUNLAP	LA–3.
NORTH LOUISIANA LEGAL ASSIST. CORP	LA–3.
NEW ORLEANS LEGAL ASSISTANCE CORP	LA–4.
NORTHWEST LOUISIANA LS, INC.	LA–5.
KISATCHIE LEGAL SERVICES CORP	LA–7.
SOUTHEAST LOUISIANA LS CORPORATION	LA–8.
ACADIANA LEGAL SERVICES CORP	LA–6, MLA.
PINE TREE LEGAL ASSISTANCE, INC	ME–1, NME–1, MME.
LEGAL AID BUREAU, INC	MDE, MD–1, MMD.
GREATER BOSTON LEGAL SERVICES	MA–1.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
CAMBRIDGE AND SOMERVILLE L.S	MA–2.
SOUTH MIDDLESEX LEGAL SERVICES, INC	MA–3.
L.S. FOR CAPE COD & ISLANDS, INC	MA–4.
MERRIMACK VALLEY LEGAL SERVICES, INC	MA–5.
NEIGHBORHOOD LEGAL SERVICES, INC	MA–6.
SOUTHEASTERN MASSACHUSETTS LAC	MA–7.
LEGAL ASSIST. CORP OF CENTRAL MASSA	MA–9.
WESTERN MASSACHUSETTS LEGAL SERVICE	MA–8, MMA.
L.S. OF SOUTHEASTERN MICHIGAN, INC	MI–1.
LGL SVCS ORG.OF SOUTHCENTRAL MI	MI–2.
WAYNE COUNTY NEIGHBORHOOD LEGAL SVC	MI–3.
LEGAL SERVICES OF EASTERN MICHIGAN	MI–4.
LEGAL AID OF CENTRAL MICHIGAN	MI–5.
LAKESHORE LEGAL SERVICES, INC	MI–6.
OAKLAND LIVINGSTON LEGAL AID	MI–7.
BERRIEN COUNTY LEGAL SERVICES	MI–8.
LGL SVCS OF NORTHERN MICHIGAN, INC	MI–9.
LEGAL AID OF WESTERN MICHIGAN	MI–10.
LEGAL AID BUREAU OF SW MICHIGAN, IN	MI–11.
MICHIGAN INDIAN LEGAL SERVICES, INC	NMI–1.
MICHIGAN MIGRANT LA PROJECT, INC	MMI.
MICRONESIAN LEGAL SERVICES CORP	MP–1.
L.A.S. OF NORTHEASTERN MINNESOTA	MN–1.
JUDICARE OF ANOKA COUNTY, INC	MN–2.
CENTRAL MINNESOTA LEGAL SERVICES	MN–3.
LEGAL SERV. OF NORTHWEST MINNESOTA	MN–4.
ANISHINABE LEGAL SERVICES	NMN–1.
JUDICARE OF MISSISSIPPI, INC	MS–2.
NORTH MISSISSIPPI RURAL LS	MS–2.
SOUTH MISSISSIPPI LEGAL SERVICES	MS–3.
SOUTHEAST MISSISSIPPI LEGAL SERVICE	MS–5.
JUDICARE OF MISSISSIPPI, INC	MS–1, MS–2, MS–3, MS–4, MS–5, MS–6.
SOUTHWEST MISSISSIPPI LGL SVCS CORP	MS–6.
EAST MISSISSIPPI LEGAL SERVICES	MS–4, NMS–1.
CENTRAL MISSISSIPPI LEGAL SERVICES	MS–1, MMS.
SOUTHEAST MISSOURI LEGAL SERVICES	MO–1.
MERAMEC AREA LGL AID CORPORATION	MO–2.
LEGAL SVC. OF EASTERN MISSOUR, INC	MO–4.
MID-MISSIOURI LEGAL SERVICES CORP	MO–5.
LEGAL AID OF SOUTHWEST MISSOURI	MO–6.
LEGAL AID OF WESTERN MISSOURI	MO–3, MMO.
MONTANA LEGAL SERVICES ASSOCIATION	MT–1, NMT–1, MMT.
LS OF SOUTHEAST NEBRASKA	NE–1.
LEGAL AID SOCIETY, INC	NE–1, NE–2, NNE–1.
WESTERN NEBRASKA LEGAL SERVICES, INC	NE–3, MNE.
NEVADA LEGAL SERVICES, INC	NV–1, NV–2, NNV–1, MNV.
NEW HAMPSHIRE LEGAL SERVICES, INC	NH–1.
CAPE-ATLANTIC LEGAL SERVICES, INC	NJ–1.
WARREN COUNTY LEGAL SERVICES	NJ–2.
UNION COUNTY LEGAL SERVICES CORP	NJ–4.
HUNTERDON COUNTY LGL. SVCS. CORP	NJ–5.
BERGEN COUNTY LEGAL SERVICES	NJ–6.
HUDSON COUNTY LEGAL SERVICES CORP	NJ–7.
ESSEX-NEWARK LEGAL SERVICES	NJ–8.
MIDDLESSEX COUNTY LGL SVC CORP	NJ–9.
PASSAIC COUNTY LEGAL AID SOCIETY	NJ–10.
SOMERSET SUSSEX LEGAL SERVICES CORP	NJ–11.
OCEAN-MONMOUTH LEGAL SERVICES, INC	NJ–12.
LEGAL AID SOCIETY OF MERCER COUNTY	NJ–13.
LEGAL AID SOCIETY OF MORRIS COUNTY	NJ–14.
CAMDEN REGIONAL LEGAL SERVICES	NJ–3, MNJ.
LAW OFFICE OF LYNN KENNEALLY	MNJ.
INDIAN PUEBLO LEGAL SERVICES	NNM–3.
LEGAL AID SOCIETY OF ALBUQUERQUE	NM–2.
NORTHERN NEW MEXICO LEGAL SERV., INC	NM–4.
DNA-PEOPLE'S LEGAL SERVICES, INC	AZ–2, NAZ–5, NM–1, NNM–2.
SOUTHERN NEW MEXICO LEGAL SERVICES	NM–3, NNM–1, MNM.
L.A.S. OF NORTHEASTERN NEW YORK	NY–1.
OAK ORCHARD LEGAL SERVICES, INC	NY–2.
LEGAL AID FOR BROOME AND CHENANGO	NY–3.
NEIGHBORHOOD LEGAL SERVICES, INC	NY–4.
CHAUTAUQUA COUNTY LEGAL SVC, INC	NY–5.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
CHEMUNG COUNTY NEIGHBORHOOD LEG SVC	NY–6.
NASSAU SUFFOLK LAW SERVICES	NY–7.
LEGAL SERVICES FOR NEW YORK CITY	NY–9.
NIAGARA CTY LEGAL AID SOCIETY	NY–10.
L.A.S. OF ROCKLAND COUNTY, INC	NY–8, NY–11.
MID-HUDSON LEGAL SERVICES, INC	NY–11.
ORANGE COUNTY PRO BONO LGL SVC., INC	NY–11.
MONROE COUNTY LEGAL ASSISTANCE CORP	NY–12.
LEGAL SERVICES OF CENTRAL NEW YORK	NY–13.
LEGAL AID SOCIETY OF MID-NY, INC	NY–14.
WESTCHESTER/PUTNAM LEGAL SERVICES	NY–15.
NORTH COUNTRY LEGAL SERVICES, INC	NY–16.
PUBLIC UTILITY LAW PROJ OF NY, INC	NY–1, NY–2, NY–3, NY–4, NY–5, NY–6, NY–7, NY–8, NY–9, NY–10, NY–11, NY–12, NY–13, NY–14, NY–15, NY–16, NY–17.
SOUTHERN TIER LEGAL SERVICES	NY–17.
FARMWORKER LGL SERVICES OF NY, INC	MNY.
LS OF SOUTHERN PIEDMONT, INC	NC–2.
NORTH CENTRAL LGL. ASST. PROGRAM	NC–3.
LAS OF NORTHWEST CAROLINA, INC	NC–4.
LEGAL SERVICE OF NORTH CAROLINA, INC	NC–1, NNC–1, MNC.
NORTH DAKOTA LEGAL SERVICES	ND–2, NND–2.
LEGAL ASSISTANCE OF NORTH DAKOTA	ND–1, NND–1.
SOUTHERN MINNESOTA REGIONAL L.S	MN–5, MMN, MND.
WESTERN RESERVE LEGAL SERVICES	OH–1.
STARK COUNTY LEGAL AID SOCIETY	OH–2.
LEGAL AID SOCIETY OF CINCINNATI	OH–3.
LEGAL AID SOCIETY OF CLEVELAND	OH–4.
THE LEGAL AID SOCIETY OF COLUMBUS	OH–5.
OHIO STATE LEGAL SERVICES ASSOC	OH–6.
LEGAL AID SOCIETY OF DAYTON	OH–7.
LEGAL AID SOCIETY OF LORAIN COUNTY	OH–8.
BUTLER-WARREN LEGAL ASST. ASSOC	OH–9.
ALLEN CTY BLACKHOOF AREA L.S. ASSOC	OH–10.
CENTRAL OHIO LEGAL AID SOCIETY, INC	OH–11.
TOLEDO LEGAL AID SOCIETY	OH–13.
WOOSTER-WAYNE LEGAL AID SOCIETY, INC	OH–14.
NORTHEAST OHIO LEGAL SERVICES	OH–15.
RURAL LGL AID SOCIETY OF W CTR OHIO	OH–16.
ADVOCATES FOR BASIC LEGAL EQUALITY	OH–12, MOH.
LS OF EASTERN OKLAHOMA, INC	OK–2.
OKLAHOMA INDIAN LEGAL SERVICES, INC	NOK–1.
LEGAL AID OF WESTERN OKLAHOMA, INC	OK–1, MOK.
LANE COUNTY LEGAL SERVICES, INC	OR–2.
MULTNOMAH COUNTY LEGAL AID SERVICE	OR–3.
MARION-POLK LEGAL AID SERVICE, INC	OR–4.
OREGON LEGAL SERVICES	OR–1, NOR–1, MOR.
LEGAL SERVICES, INC	PA–1.
DELAWARE COUNTY LGL. ASST. ASSN	PA–2.
BUCKS COUNTY LEGAL AID SOCIETY	PA–3.
LAUREL LEGAL SERVICES, INC	PA–4.
SOUTHERN ALLEGHENYS LEGAL AID, INC	PA–5.
CENTRAL PENNSYLVANIA LEGAL SERVICES	PA–6.
NEIGHBORHOOD LEGAL SERVICES ASSOC	PA–8.
NORTHERN PENNSYLVANIA LGL SERVICES	PA–9.
KEYSTONE LEGAL SERVICES, INC	PA–10.
SOUTHWESTEN PENN LGL AID SOCIETY	PA–11.
LEGAL AID OF CHESTER COUNTY, INC	PA–12.
LEGAL SERVICES OF NE PENNSYLVANIA	PA–13.
SUSQUEHANNA LEGAL SERVICES	PA–14.
NORTHWESTERN LEGAL SERVICES	PA–15.
BLAIR COUNTY LEGAL SERVICES CORP	PA–16.
LEHIGH VALLEY LEGAL SERVICES	PA–17.
MONTGOMERY COUNTY LEGAL AID SERVICE	PA–18.
SCHUKILL COUNTY LEGAL SERVICES, INC	PA–19.
PHILADELPHIA LEGAL ASSISTANCE CTR	PA–7, MPA.
COMMUNITY LAW OFFICE, INC	PR–2.
PUERTO RICO LEGAL SERVICES, INC	PR–1, MPR.
RHODE ISLAND LEGAL SERVICES, INC	RI–1, MRI.
PALMETTO LEGAL SERVICES	SC–2.
CAROLINA REGIONAL LEGAL SERVICES	SC–3.
LGL SVCS AGENCY OF WESTERN CAROLINA	SC–4.

Name of organization	Service areas identified in LSC RFP (Oct. 1995)
PIEDMONT LEGAL SERVICES, INC	SC–5.
LGL SVC OF THE 4TH JUDICIAL CIRCUIT	SC–6.
NEIGHBORHOOD LGL ASSIS. PROGRAM	SC–1, MSC.
UPSTATE LEGAL SERVICES CORPORATION	SC–5, SC–6, MSC.
EAST RIVER LEGAL SERVICES CORPO	SD–2.
DAKOTA PLAINS LEGAL SERVICES	SD–3, NSD–1.
BLACK HILLS LEGAL SERVICES, INC	SD–1, MSD.
SOUTHEAST TENNESSEE LEGAL SERVICES	TN–1.
KNOXVILLE LEGAL AID SOCIETY, INC	TN–3.
MEMPHIS AREA LEGAL SERVICES, INC	TN–4.
L.A.S. OF MIDDLE TENNESSEE	TN–5.
RURAL LS OF TENNESSEE, INC	TN–6.
WEST TENNESSEE LEGAL SERVICES	TN–7.
LS OF SOUTH CENTRAL TENNESSEE, INC	TN–8.
LEGAL SVC OF UPPER EAST TENNESSEE	TN–2, MTN.
LEGAL AID SOCIETY OF CENTRAL TEXAS	TX–1.
COASTAL BEND LEGAL SERVICES	TX–2.
LEGAL SERVICES OF NORTH TEXAS	TX–3.
EL PASO LEGAL ASSISTANCE SOCIETY	TX–4.
WEST TEXAS LEGAL SERVICES	TX–5.
GULF COAST LEGAL FOUNDATION	TX–6.
LAREGO LEGAL AID SOCIETY, INC	TX–7.
BEXAR COUNTY LEGAL AID ASSOC., INC	TX–8.
HEART OF TEXAS LEGAL SERVICES	TX–9.
EAST TEXAS LEGAL SERVICES, INC	TX–11.
TEXAS RURAL LEGAL AID, INC	TX–10, NTX–1, MTX.
UTAH LEGAL SERVICES, INC	UT–1, NUT–1, MUT.
LS LAW LINE OF VERMONT, INC	VT–1, MVT.
L.S. OF NORTHERN VIRGINIA, INC	VA–1.
CHARLOTTESVILLE-ALBEMARLE LAS	VA–2.
RAPPAHANNOCK LEGAL SERVICES, INC	VA–3.
SOUTHWEST VIRGINIA LEGAL AID SOC	VA–4.
CENTRAL VIRGINIA LEGAL AID SOCIETY	VA–6.
LAS OF NEW RIVER VALLEY, INC	VA–7.
THE LEGAL AID SOC. OF ROANOKE VALL	VA–8.
TIDEWATER LEGAL AID SOCIETY	VA–9.
VIRGINIA LEGAL AID SOCIETY	VA–10.
SOUTHSIDE VIRGINIA LEGAL SERVICES	VA–11.
BLUE RIDGE LEGAL SERVICES, INC	VA–12.
CLIENT CTR LGL SVC OF SW VA,INC.	VA–13.
PENINSULA LEGAL AID CENTER, INC	VA–5, MVI.
NORTHWEST JUSTICE PROJECT	WA–1, WA–2, WA–3, NWA–1, MWA.
APPALACHIAN RESEARCH & DEFENCE FUND	WV–1.
LEGAL AID SOCIETY OF CHARLESTON	WV–2.
WEST VIRGINIA LGL. SVCS. PLAN, INC	WV–3, WV–4, MWV.
L.S. OF NORTHEASTERN WISCONSIN, INC	WI–3.
WESTERN WISCONSIN LEGAL SERVICES	WI–4.
WISCONSIN JUDICARE, INC	WI–2, NWI–1.
LEGAL ACTION OF WISCONSIN, INC	WI–1, MWI.
LGL SVC FR SOUTHEASTERN WYOMING, INC	WY–3.
WIND RIVER LEGAL SERVICES	WY–1, NWY–1.
LEGAL AID SERVICES, INC	WY–1, WY–2, WY–3, NWY–1, MWY.

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42U.S.C. 2996e(a)(1)). Awards will be made so that each service area indicated is served by one of the organizations listed above, although each of the listed organizations is not necessarily guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 1996, or as soon as thereafter as possible, consistent with pending Congressional appropriations.

Merceria L. Ludgood,

Director, Office of Program Services.

[FR Doc. 95–28845 Filed 11–24–95; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA)

publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before January 11, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Health and Human Services, Administration for Health Care Policy and Research (N1–510–94–2). Hardcopy data collected for the Medical Treatment Effectiveness Program.

2. Department of Housing and Urban Development (N1–196–95–1). Public Housing Administration Legal Opinions, 1937–1971, relating to administrative matters.

3. Department of the Interior, Bureau of Reclamation (N1–115–94–4). General administrative records pertaining to the Bureau's research, testing, and technical program.

4. Department of State, Bureau of Population, Refugees, and Migration (N1–59–95–23). Routine, facilitative, and duplicative records.

5. Department of the Treasury, Internal Revenue Service (N1–58–95–4). Comprehensive schedule for the Martinsburg Computer Center.

6. Advisory Committee on Human Radiation Experiments (N1–220–95–9). Duplicative electronic records that do not meet the National Archives requirements for transfer.

7. Interstate Commerce Commission (N1–134–83–1). Public Dockets (a selection of which are designated for preservation).

8. President's Committee on Consumer Interests (N1–220–95–13). Consumer correspondence, 1969–1970.

Dated: November 8, 1995.

James W. Moore,

Assistant Archivist for Records Administrative.

[FR Doc. 95–28751 Filed 11–24–95; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences April-June, 1995; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires NRC to disseminate information on abnormal occurrences (AOs) (i.e., unscheduled incidents or events that the Commission determines are significant from the standpoint of public health and safety). During the second quarter of CY 1995, the following incidents at NRC licensed facilities were determined to be AOs and are described below, together with the remedial actions taken. Each event is also being included in NUREG–0090, Vol. 18, No. 2, (''Report to Congress on Abnormal Occurrences: April-June 1995''). This report will be available at NRC's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, about three weeks after the publication date of this Federal Register Notice.

Nuclear Power Plants

95–2 Reactor Coolant System Blowdown at Wolf Creek Nuclear Generating Station

One of the AO reporting guidelines notes that major deficiencies in design, construction, use of, or management controls for licensed facilities or material can be considered an AO.

Date and Place—September 17, 1994; Wolf Creek Nuclear Generating Station, a Westinghouse-designed pressurized water reactor nuclear power plant, operated by Wolf Creek Nuclear Operating Corporation and located about 5.63 kilometers (3.5 miles) northeast of Burlington, Kansas.

Nature and Probable Consequences—An inadvertent blowdown of approximately 34,868 liters (9200 gallons) of reactor coolant through the residual heat removal (RHR) system to the refueling water storage tank (RWST) occurred because of incompatible, concurrent RHR valve manipulations. At the time of the event, the reactor had been shutdown for 28 hours and was on RHR cooling (2413 kPa gauge and 149 C [350 psi gauge and 300 F]). The event was successfully terminated in 1 minute by operator intervention. There was only minimal interruption to heat removal processes, and no core damage or fission product release occurred. However, if the blowdown continued, the licensee estimated that RHR cooling could have failed in about 3.5 minutes, the RWST header could have filled with steam in about 6 minutes, and uncovering of the core could have begun in about 30 minutes.

All of the emergency core cooling system (ECCS) pumps take their suction from the RWST header line. If the ECCS pumps were started to mitigate the blowdown after the RWST header filled with steam, a common-mode failure of all ECCS pumps could have occurred as a result of steam binding. The ECCS pumps could also have failed as a result of pressure pulses caused by cold RWST

water collapsing the steam in the RWST and RWST header. If they failed, successful mitigation of such an event would depend on the control room operators' cognitive abilities to establish core heat removal via the steam generators.

If core damage did occur, then a possibility for a significant offsite release existed because the blowdown path in place at the time bypassed the reactor containment.

Cause or Causes—This event was attributed to the following three causes:

(1) *Unrecognized design vulnerability*—An RHR-RWST connecting line was designed to provide operational convenience for refilling the RWST after a refueling outage, but not for safety purposes. The inappropriate use of this line while on RHR cooling could result in a rapid blowdown event and a subsequent common-mode failure of all ECCS pumps.

(2) *Inappropriate use of the RHR-RWST connecting line*—The licensee inappropriately used the RHR-RWST connecting line to increase the boron concentration of the RHR train. (Other boration paths existed that would not have resulted in an inadvertent blowdown.)

(3) *Inadequate work control*—The licensee was deficient in the control of maintenance and operational evolutions by allowing incompatible activities to occur simultaneously. The control room crew had ample warning of the potential adverse effects of these activities just prior to the event, but failed to limit the concurrent manipulation of selected RHR valves.

The licensee also had previous warnings of blowdown events from its experience at Wolf Creek and from the following NRC Information Notices: 90–55, ''Recent Operating Experience on Loss of Reactor Coolant Inventory While in a Shutdown Condition''; and 91–42, ''Plant Outage Events Involving Poor Coordination Between Operations and Maintenance Personnel During Valve Testing and Manipulations.'' The licensee's response to these warnings was that its administrative controls adequately addressed the concerns.

Actions Taken to Prevent Recurrence

Licensee—The licensee implemented the following actions: (1) Chain locked the isolation valve in the RHR-RWST connecting line, and made the plant manager and operations manager solely responsible for access to this valve; (2) removed the use of the RHR-RWST connecting line from the RHR boration procedures; and (3) approached the Westinghouse Owners Group to address the issue generically.

NRC—NRC issued Information Notice No. 95–03, ''Loss of Reactor Coolant Inventory and Potential Loss of Emergency Mitigation Functions While in a Shutdown Condition,'' to inform all reactor licensees of the circumstances and potential consequences associated with the Wolf Creek event.

95–3 Previously Unidentified Path for the Potential Release of Radioactivity at Millstone Nuclear Power Station Unit 2

One of the AO reporting guidelines notes that a loss of plant capability to perform essential safety functions, such that a potential release of radioactivity in excess of 10 CFR Part 100 guidelines could result from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod system), can be considered an AO.

Date and Place—December 6, 1994; Millstone Nuclear Power Station Unit 2, a Combustion Engineering-designed pressurized water reactor nuclear power plant, operated by Northeast Nuclear Energy Company and located about 5.15 kilometers (3.2 miles) west-southwest of New London County, Connecticut.

Nature and Probable Consequences—While the plant was in a refueling outage, a systems engineer employed by the licensee identified a condition that established a potential unfiltered release path to the atmosphere that could have resulted in offsite doses in excess of 10 CFR Part 100 guidelines in the event of a postulated loss-of-coolant accident (LOCA). The licensee immediately declared the enclosure building inoperable and promptly reported the condition to NRC.

The Millstone Unit 2 design includes an Enclosure Building around the reactor Containment Building to collect all leakage out of the containment during a postulated LOCA. The Enclosure Building Ventilation System contains a charcoal bed filtration unit to remove radioactive iodine prior to discharging the Enclosure Building air out of the 114.4-meter (375-foot) high Unit-1 stack. The condition identified on December 6, 1994, was that the ventilation system associated with the Hydrogen Analyzer cabinet and waste gas sample hood fan, located within the East Electrical Penetration Room of the Enclosure Building, would not isolate in the event of a LOCA. During a postulated accident, this ventilation system, which does not contain a charcoal filter unit, would draw Enclosure Building air (contaminated with any containment leakage) from the East Penetration Room and discharge it through the 45.8-meter (150-foot) high Unit 2 vent. The lack of a charcoal filter and the lower release point would significantly increase the potential of a thyroid dose in excess of the 10 CFR Part 100 guideline at the exclusion area boundary.

The Technical Specifications for Millstone Unit 2 require that the Enclosure Building integrity be maintained to ensure that the Enclosure Building Ventilation System limits the site boundary doses to within 10 CFR Part 100 guidelines following a postulated design basis accident. NRC performed a design basis dose calculation which took into account the lack of charcoal filtration and the lower elevation release path which would result from the noted design deficiency. This calculation indicated that an exclusion area boundary dose to the thyroid greater than the 10 CFR Part 100 guideline of 3000 millisievert (mSv) (300 rem) would occur. It also indicated that the whole body dose would not exceed the 250 mSv (25 rem) 10 CFR Part 100 guideline. The NRC calculation was very conservative in that it assumed that all of the designed allowable containment leakage, following the design basis accident, would be through the penetrations in the East Electrical Penetration Room and released from the Enclosure Building through the Hydrogen Analyzer Ventilation system.

Cause or Causes—The cause of this condition was an original design deficiency of the hydrogen analyzer cabinet exhaust system.

Actions Taken to Prevent Recurrence

Licensee—The licensee modified the design to route the exhaust path from the hydrogen analyzer cabinet into the enclosure building ventilation system, thereby going through the appropriate filtration, in order to reduce any post-LOCA radioactive release to below 10 CFR Part 100 guidelines. The waste gas sample sink was relocated from the enclosure building to the auxiliary building. This design modification was implemented prior to the start up of Millstone Unit 2.

NRC—On February 16, 1995, NRC exercised enforcement discretion and did not issue a violation. In accordance with the ''General Statement of Policy and Procedure for NRC Enforcement Actions,'' (Enforcement Policy) then set out at 10 CFR Part 2, Appendix C, this design deficiency would normally be categorized as a Severity Level III violation and enforcement action would normally be considered because it involved a violation of the Technical Specifications and could have resulted in 10 CFR Part 100 guidelines being exceeded in the event of a LOCA. However, the exercise of discretion for the apparent Severity Level III violation

was determined to be warranted in this instance because: (1) The condition was identified by the licensee's staff as a result of a questioning attitude by a system engineer and was promptly reported to the NRC; (2) the condition, which existed since initial startup, was difficult to discover and such identification was not likely by routine inspection, surveillance and quality assurance activities; (3) comprehensive corrective actions were taken within a reasonable time period that involved an adequate root cause determination and a review for failures caused by similar root causes; and (4) the condition was caused by an old performance failure that is not reasonably linked to present performance.

This event was determined to be plant specific due to the unique design of the ventilation system.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

95–4 Medical Brachytherapy Misadministration at the University of Virginia, in Charlottesville, Virginia

One of the AO reporting guidelines notes that a therapeutic exposure to any part of the body not scheduled to receive radiation can be considered an AO.

Date and Place—March 14, 1995; University of Virginia Medical Center; Charlottesville, Virginia.

Nature and Probable Consequences—A patient was prescribed a manual brachytherapy procedure using cesium-137 (Cs-137) sources loaded in an applicator, for a total gynecological treatment dose of 3000 centigray (cGy) (3000 rad).

During insertion of the applicator into the patient, one of the sources fell onto the patient's bed and was unnoticed by the licensee staff involved in performing the procedure. A nurse found the source in the bed on March 15 and removed it. The source was reloaded into the applicator and the physician revised the prescribed dose to 2500 cGy (2500 rad). The licensee estimated that the source remained at approximately 10 centimeters (4 inches) from the patient's foot for 18 hours and delivered a dose of about 13 cGy (13 rad) to the foot.

The licensee notified the referring physician and the patient of the misadministration. An NRC medical consultant was obtained who concluded that the patient was receiving appropriate follow-up care. In addition, the licensee and the medical consultant concluded that the patient will not experience any adverse health effects as a result of the misadministration.

Cause or Causes—The licensee's staff involved in the brachytherapy procedure were not familiar with handling of the applicator that contained the Cs-137 sources. Also, because of anatomic characteristics of the patient, the physician had difficulty inserting the source carrier into the applicator. The design of the afterloading device allows the source to slide out of the carrier if any unusual manipulation of source carrier is required. The difficulty experienced by the physician in inserting the source in the applicator and the design of the source carrier resulted in the source falling out of the carrier during the insertion process.

Actions Taken to Prevent Recurrence

Licensee—The licensee provided training for its staff, involved in brachytherapy procedures, concerning the precautions which must be taken when handling an applicator such as the one used in the subject procedure. Also, emphasis was placed on the need to be more attentive during the source insertion process in order to account for all prescribed sources.

NRC—NRC conducted a special inspection on March 23–24, 1995, to review the circumstances surrounding the misadministration. The inspection report was issued on May 2, 1995. Enforcement action will be taken as appropriate.

95–5 Medical Therapeutic Radiopharmaceutical Misadministration of Iodine-131 at Massachusetts General Hospital in Boston, Massachusetts

One of the AO reporting guidelines notes that administering a therapeutic dose of a radiopharmaceutical differing from the prescribed dose by more than 10 percent and the actual dose is greater than 1.5 times the prescribed dose can be considered an AO.

Date and Place—May 9, 1995; Massachusetts General Hospital; Boston, Massachusetts.

Nature and Probable Consequences—A patient was prescribed a 296 megabecquerel (MBq) (8 millicurie [mCi]) dosage of iodine-131 (I–131) for hyperthyroidism; however, a dosage of 1106.3 MBq (29.9 mCi) was administered.

Representatives of the hospital informed the referring physician and the patient of the misadministration. An NRC medical consultant was obtained to evaluate the event and stated that the higher dosage given to the patient will result in a more likely achievement of the intended therapeutic goal to eliminate the patient's hyperthyroidism. Additionally, the consultant determined that it is unlikely that the patient is at significant risk of experiencing long-term consequences from receiving the higher dosage beyond the risk associated with the prescribed dosage. Therefore, the impact on the patient's health is expected to be negligible with no expected long-term disability. (The intent of the prescribed dose was to ablate the portion of the thyroid remaining after surgery and then support the patient with thyroid supplement the rest of her life. This did not change with the administered dose.)

Cause or Causes—The licensee stated that this event occurred because of a human error. The technologist involved in this procedure inadvertently switched the labeled lids on the vial shields containing the I–131 dosages prescribed for different patients. Additionally, the technician failed to check for the correct dosage on the vial label, and the wrong dose was administered to the intended patient.

Actions Taken to Prevent Recurrence

Licensee—The licensee instituted a procedure for checking the vial label before giving a dose. In addition, the licensee is obtaining a second dose calibrator which will be used in the out-patient dosing room of the Thyroid Clinic. Each dose will be re-assayed immediately before the I–131 is administered to the patient, rather than relying on the assay which was performed in the Thyroid Lab before the dose was transported to the out-patient dosing room.

NRC—NRC performed an inspection on May 12, 1995, to learn about the event and determined that it constituted a misadministration as defined in 10 CFR 35.2. NRC determined that this was an isolated violation of the licensee's Quality Management Program and issued a Notice of Violation at the Severity Level IV on June 26, 1995.

95–6 Multiple Medical Brachytherapy Misadministrations at Madigan Army Medical Center in Fort Lewis, Washington

One of the AO reporting guidelines notes that administering a therapeutic dose from a sealed source such that the treatment dose differs from the prescribed dose by more than 10 percent and the event (regardless of health effects) affects two or more patients at the same facility can be considered an AO.

Date and Place—February 1994 through May 1995; Madigan Army Medical Center (MAMC); Fort Lewis, Washington.

Nature and Probable Consequences—Four patients were prescribed brachytherapy procedures, using iridium-192 seeds of different source strengths, and received doses other than those prescribed because of the same computer input error. (The same computer input error could cause either underdoses or overdoses because the algorithm used was dose dependent.) Details of the misadministrations are as follows:

Patient A: The patient was prescribed a dose of 2800 centigray (cGy) (2800 rad) for a gynecological brachytherapy treatment, but received a dose of about 1680 cGy (1680 rad) instead.

Patient B: Event 1—The patient was prescribed a dose of 1600 cGy (1600 rad) for lung treatment, but received a dose of about 2128 cGy (2128 rad) instead.

Event 2—On another day, the same patient was prescribed a dose of 1500 cGy (1500 rad) for lung treatment, but received a dose of about 2350 cGy (2350 rad) instead.

Patient C: The patient was prescribed a dose of 3000 cGy (3000 rad) for gynecological treatment, but received a dose of about 5142 cGy (5142 rad) instead.

Patient D: The patient was prescribed a dose of 1500 cGy (1500 rad) for a biliary tract treatment, but received a dose of about 2050 cGy (2050 rad) instead.

The licensee does not expect the patients to experience any adverse health effects as a result of the misadministrations.

Cause or Causes—Based upon NRC's initial review of the misadministrations, it appears that the probable causes of the treatment errors were failures to: (1) independently review or check the data input to the computerized treatment planning system, and (2) perform an independent check of dose rate calculations generated by the treatment planning system.

Actions Taken to Prevent Recurrence

Licensee—The physics staff at MAMC promptly corrected the data entered into the computer treatment planning computer, recalculated the doses received by the patients, and took steps to ensure that appropriate data will be used for future treatment plans.

NRC—NRC initiated an inspection on June 6, 1995, to review the circumstances associated with the misadministrations and to review the licensee's corrective actions. (As of the date of this report, the inspection is ongoing.) An NRC medical consultant will review each case in order to provide an independent assessment of the potential consequences of the overdoses.

Dated at Rockville, MD this 20th day of November, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–28835 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 030–31765–CivP EA 94–006 ASLBP No. 95–708–01–CivP]

Atomic Safety and Licensing Board; In the Matter of Oncology Services Corporation (Harrisburg, Pennsylvania, Byproduct Materials License No. 37–28540–01); Notice of Hearing (Staff Order Imposing Civil Monetary Penalties)

November 20, 1995.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. George C. Anderson, Dr. A. Dixon Callihan.

On April 24, 1995, the NRC staff issued an order imposing civil penalties in the amount of $280,000 on Oncology Services Corporation (OSC) for alleged regulatory violations relating to activities under Byproduct Materials License No. 37–28540–01. (60 Fed. Reg. 21,560.) That license authorized OSC to possess and use certain byproduct materials under specified conditions at six facilities in Pennsylvania.[1] The violations at issue were identified during a December 3–18, 1992 NRC inspection regarding a November 1992 misadministration incident at OSC's Indiana (Pennsylvania) Regional Cancer Center, and December 8, 1995 inspections of OSC facilities in Exton and Lehighton, Pennsylvania.

The April 1994 order provided that on or before May 24, 1995, OSC could submit a request for a hearing regarding the staff's civil penalty determination. On May 18, 1995, OSC filed a timely hearing request regarding the civil penalty order. The Commission referred OSC's submission to the Atomic Safety and Licensing Board Panel on May 25, 1995, for the appointment of a presiding officer to conduct any necessary proceedings. On May 30, 1995, the Acting Chief Administrative Judge of the Panel appointed this Atomic Safety and Licensing Board pursuant to the Commission's referral. (60 Fed. Reg. 29,901.) The Board consists of Dr. George C. Anderson, Dr. A. Dixon Callihan, and G. Paul Bollwerk, III, who will serve as Chairman of the Board.

Pursuant to the Board's June 12, 1995 initial prehearing order, on August 23, 1995, OSC and the staff submitted a prehearing report in which they individually or jointly identified some 259 ''central'' issues for litigation in this proceeding. Two days later, OSC filed a motion with the Board requesting that the proceeding be stayed pending the resolution of an open staff investigation of OSC, the termination of which OSC asserted could result in settlement of this proceeding. The staff opposed OSC's stay request. After entertaining party arguments on the motion during an October 11, 1995 prehearing conference, by unpublished memorandum and order issued October 30, 1995, the Board denied the stay request and established a schedule for filing prediscovery dispositive motions regarding the ''central'' litigation issues identified by the parties.

Please take notice that a hearing will be conducted in this proceeding. The parties to the hearing are the NRC staff and OSC. The hearing will be governed by the procedures set forth in 10 C.F.R. Part 2, Subpart G (10 C.F.R. 2.700–.790).

During the course of this proceeding, the Board may hold additional prehearing conferences or oral arguments, as provided in 10 C.F.R. 2.752, 2.755. The public is invited to attend any prehearing conference or oral argument, as well as any evidentiary hearing that may be held pursuant to 10 C.F.R. 2.750–.751. The Board will establish the schedules for such sessions at a later date, through notices to be published in the Federal Register and/or made available to the public at NRC Public Document Rooms.

In accordance with 10 C.F.R. 2.715(a), any person not a party to this proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence but may assist the Board and/or the parties in the definition of the issues being considered. Written limited appearance statements should be sent to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. A copy of the statement also should be served on the Chairman of the Atomic Safety and Licensing Board. The Board will make a determination at a later date whether oral limited appearance statements will be entertained.

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[1] License No. 37–28540–01 was due to expire on August 31, 1995. On December 13, 1993, OSC requested that license be terminated and replaced with individual licenses issued to the facilities named as locations of use on that license. On August 24, 1994, License No. 37–28540–01 was terminated and the agency subsequently issued separate licenses for five of the six facilities. See *Oncology Servs. Corp.*, LBP–94–29, 40 NRC 123, 124 n.1 (1994).

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037.

Dated: November 20, 1995.

For the Atomic Safety and Licensing Board.

G. Paul Bollwerk, III,

Chairman, Administrative Judge.

[FR Doc. 95–28833 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

Nominations of New Member of the Advisory Committee on the Medical Uses of Isotopes

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission is inviting nominations, of individuals who are qualified as nuclear medicine physicians, for a position on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

DATES: Nominations are due January 26, 1996.

ADDRESSES: Submit nominations to: The Office of Personnel, ATTN: Ms. Jude Himmelberg, Mail Stop T2D32, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION, CONTACT: Josephine M. Piccone, Ph.D., Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–415–7270.

SUPPLEMENTARY INFORMATION: The ACMUI advises the NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on changes in NRC rules, regulations, and guides concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and providing technical assistance in licensing, inspection, and enforcement cases.

Committee members possess the medical and technical skills needed to address evolving issues. Currently the membership of the ACMUI consists of five practicing physicians; a physician representing the U.S. Department of Health and Human Services, Food and Drug Administration; one nuclear pharmacist; one medical physicist; one representative with the States' perspective; one patients' rights and care advocate; and one health care administrator. The specialties of the physicians on the ACMUI are: nuclear cardiology (one); therapeutic radiology, with expertise in teletherapy and brachytherapy (two); nuclear medicine research (one); and nuclear medicine (one). The term of the current nuclear medicine physician member is scheduled to end September 1996. Nominations for the position of radiation therapy technologist/medical dosimetrist and medical physicist with expertise in radiation therapy are currently being evaluated.

NRC is soliciting nominations of persons who are qualified as nuclear medicine physicians. Persons having the aforementioned qualifications are encouraged to apply.

Nominees must include four copies of their resume, describing their educational and professional qualifications, and provide their current address and telephone number.

All new cmommittee members will serve a 2-year term, with possible reappointment to two additional 2-year terms.

Nominees must be U.S. citizens and be able to devote approximately 80 hours per year to committee business. Members will be compensated and reimbursed for travel (including per diem in lieu of subsistence), secretarial, and correspondence expenses. Nominees will undergo a security background check and will be required to complete financial disclosure statements, to avoid conflict-of-interest issues.

Dated at Washington, DC, this 20th day of November, 1995.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer, Office of the Secretary of the Commission.

[FR Doc. 95–28834 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No: 040–08948 040–07397]

Information Meeting Concerning the Development of an Environmental Impact Statement for the Shieldalloy Metallurgical Corporation, Cambridge, Ohio, Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice is to inform the public of a meeting to discuss the U. S. Nuclear Regulatory Commission's process for decommissioning nuclear facilities and the development of an environmental impact statement (EIS) for the Shieldalloy Metallurgical Corporation (SMC), Cambridge, Ohio, facility, one of the key steps in this process. A brief status report will also be provided for the remediation of properties, in the Cambridge, Ohio, area, that contain slag that may have been removed from the Shieldalloy facility. Interested individuals are invited to attend this meeting. NRC, SMC, Cyprus Foote Mineral Company (CFMC), State and local officials, and citizen groups will share information concerning these topics in a facilitated roundtable discussion.

Background

The SMC facility processes ores for the production of metal alloys. The SMC license (SMB–1507) authorizes the possession of the radionuclides uranium and thorium as contaminants in slag from previous operations at this site. The previous owners (Vanadium Corporation of America, now Newmont Mining Corporation, and Foote Mineral Company (FMC), now Cyprus Foote Mineral Company) had processed an ore containing licensable quantities of natural uranium and thorium, and radionuclides resulting from their radioactive decay. The processing of this ore started in the late 1950s and ended in the early 1970s. In processing this ore to produce metal alloys, the radioactive material contained in the ore was segregated into slag. The waste slag is currently in a dense, rock-like form and stored in two piles on the site. In 1987, SMC purchased the facility from FMC. SMC continues to process ores for the production of metal alloys. However, these ores do not contain licensable quantities of radioactive material. With the exception of radioactive contamination that exists in, or originated from, the two slag piles, SMC has remediated the radioactive contamination at the site. NRC staff is developing an EIS to evaluate alternatives associated with decommissioning the slag piles.

In a possibly related matter, it was determined, in 1993, that slag from the site, when it was owned by FMC, may have been used as fill at offsite locations. Radiation surveys and slag analyses that NRC conducted in 1994 indicate that the slag does not pose an immediate health and safety risk to residents. However, some action may be necessary at specific locations, to minimize the long-term risk associated with the slag. In a letter dated January 25, 1995, SMC requested that the EIS be modified to include an analysis of the relocation of the offsite slag to the SMC, Cambridge, Ohio, site.

In addition to the issues that fall under NRC's jurisdiction, there are other environmental issues, associated with decommissioning the Cambridge site,

that are regulated by State and other Federal agencies, including the U.S. Environmental Protection Agency, the Ohio Environmental Protection Agency, and the Ohio Department of Health. As a result of these other environmental issues, SMC and CFMC are conducting a remedial investigation/feasibility study (RI/FS) for the SMC, Cambridge, Ohio, facility. In a letter dated July 5, 1995, SMC requested that the EIS be further expanded to examine the impacts of depositing, on one of the slag piles, contaminated soils and sediments resulting from site remediation under the RI/FS.[1]

A notice of intent to revise the scope of this EIS—to consider the impacts of depositing soils and sediments on the West Slag Pile and relocating slag from offsite—was published in the Federal Register on August 21, 1995 (60 FR 43477). In addition, SMC has stated that some of the slag may have a commercial use. Further information is needed from SMC to evaluate the impacts of this use. An additional expansion in scope may be needed to include this alternative.

The NRC hopes to accomplish three main objectives at the December 5, 1995, meeting;

- To describe NRC's overall decommissioning process for a nuclear facility, with an emphasis on opportunities for public involvement and participation, and the EIS portion of the process.
- To provide a status report on the EIS, including the additional alternatives of returning offsite slag and contaminated soils and sediments to the existing slag piles for permanent disposal.
- To provide a brief status report on the offsite slag situation.

NRC anticipates that the information provided at the public meeting will stimulate additional public comment. NRC will keep the roundtable participants, and the general public, informed of its decision-making process on this issue, and provide opportunities for public comment, including additional meetings such as this.

NRC recently prepared a preliminary draft of the EIS for the Cambridge facility and requested agencies cooperating in its development (Ohio Environmental Protection Agency, Ohio Department of Health, and the U.S. Environmental Protection Agency) to provide comments on this preliminary draft, consistent with their responsibilities under law. This is a preliminary draft that will be revised, based on these agencies' comments, and issued in the spring of 1996 as a draft for public comment. NRC will be soliciting public comments on the EIS at that time, after consideration and resolution of the cooperating agencies' comments.

Conduct of Meeting

The meeting will be held on December 5, 1995, in the Pritchard-Laughlin Civic Center, Cambridge, Ohio. The meeting will begin at 7:00 p.m. and will end at 10:00 p.m. The meeting will be facilitated by F.X. Cameron, NRC's Special Counsel for Public Liaison. The purpose of this meeting is to discuss, with representative stakeholders and the public, information concerning NRC's decommissioning process. The meeting will involve invited representatives from the following groups: NRC, SMC, CFMC, State and local officials, local citizen groups, and the public. These representatives will participate in a facilitated round-table discussion. An agenda for the meeting will be prepared and distributed to all invited representatives, as well as placed in the local public document room, in advance of the meeting. The public will be present during the meeting and time will be provided for public comment. Future information meetings will be held periodically concerning other issues relating to the decommissioning of the Shieldalloy facility and the remediation of offsite contamination.

FOR FURTHER INFORMATION, CONTACT: James E. Kennedy, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop T–7–F–27, Washington, D.C., 20555, telephone (301) 415–6668.

Dated at Rockville, MD this 17th day of November, 1995.

For the U.S. Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–28828 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on November 28 and 29, 1995, at the General Electric Nuclear Energy (GENE) Headquarters, 175 Curtner Avenue, San Jose, California.

Most of the meeting will be closed to public attendance to discuss GENE proprietary information pursuant to 5 U.S.C. 552b(c)(4), with the exception of an approximately two-hour session that will be open to the public beginning at 8:30 a.m. on November 28, 1995.

The agenda for the subject meeting shall be as follows:

Tuesday, November 28, 1995–8:30 a.m. until the conclusion of business.

Wednesday, November 29, 1995–8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the GENE Test and Analysis Program being conducted in support of the Simplified Boiling Water Reactor (SBWR) passive plant design certification. Discussion topics will include: Revision C of the GENE Test and Analysis Program description document and the SBWR scaling analysis report. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer(s) named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of GENE, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST) (after November 16, 1995, contact Dr. Medhat El-Zeftawy at 301/415–

[1] Related documents (letters and reports) are available for public review at the Guernsey County District Public Library, 800 Steubenville Avenue, Cambridge, Ohio.

6889). Persons planning to attend this meeting are urged to contact the above named individual(s) one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: November 13, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–28829 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 6, 1995, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 6, 1995—2:00 P.M. until the conclusion of business.

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 15, 1995.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 95–28830 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Joint Meeting of the Subcommittees on Individual Plant Examinations/Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Individual Plant Examinations (IPEs) and on Probabilistic Risk Assessment (PRA) will hold a joint meeting on December 14 and 15, 1995, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, December 14, 1995–8:30 a.m. until the conclusion of business.

Friday, December 15, 1995–8:30 a.m. until the conclusion of business.

The Subcommittees will continue to discuss topics related to Risk Based Regulatory Applications (RBRA), including identification of the models, analysis and regulatory issues that are currently amenable to risk based regulatory approach, and other related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: November 11, 1995

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 95–28831 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 7–8, 1995, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Tuesday, August 22, 1995 (60 FR 43619).

Thursday, December 7, 1995

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 A.M.–10:15 A.M.: Proposed Final Generic Letter on Inadequate Testing of Safety-Related Logic Circuits (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final Generic Letter on Inadequate Testing of Safety-Related Logic Circuits.

Representatives of the industry will participate, as appropriate.

10:30 A.M.–12:00 Noon: Multiple System Responses Program (MSRP)

(Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the resolution of the MSRP issues.

1:30 P.M.–3:00 P.M.: Meeting with the Director of the Office of Nuclear Reactor Regulation (NRR) (Open)—The Committee will hear presentations by and hold discussions with Mr. William Russell, NRR Director, on items of mutual interest, including the following: Risk/Performance-Based Regulations, Risk-Based Inspection Program, Activities of the Nuclear Industry in Support of the Risk/ Performance-Based Regulations, AP600 and SBWR review status, and ASME piping code review.

3:00 P.M.–3:30 P.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

3:45 P.M.–4:15 P.M.: Future ACRS Activities (Open)—The Committee will discuss recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

4:15 P.M.–4:30 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses of the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports. These responses are expected to be received from the EDO before the meeting.

4:30 P.M.–6:45 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as a proposed ACRS report on resolution of Generic Safety Issue-78, ''Monitoring of Fatigue Transient Limits for the Reactor Coolant System''.

Friday, December 8, 1995

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–9:15 A.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

9:30 A.M.–10:00 A.M.: Preparation for Meeting with the NRC Chairman (Open)—The Committee will select items that may be discussed with the NRC Chairman.

10:00 A.M.–11:00 A.M.: Meeting with the NRC Chairman (Open)—The Chairman will meet with the Committee to discuss her regulatory agenda and philosophy, and other items of mutual interest.

11:15 A.M.–12:15 P.M.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will prepare for meeting with the NRC Commissioners to discuss items of mutual interest including, Rulemaking to amend 10 CFR 50.48, Fire Protection, Nondestructive Examination Techniques, and National Academy of Sciences/National Research Council Study on Digital Instrumentation and Control.

1:30 P.M.–3:00 P.M.: Meeting with the NRC Commissioners (Open)—The Committee will meet with the NRC Commissioners in the Commissioners' Conference Room, One White Flint North, to discuss items of mutual interest including those noted above.

3:15 P.M.—3:45 P.M.: Election of Officers for Calendar Year 1996 (Open)—The Committee will elect Chairman and Vice Chairman to the ACRS, and Member-at-Large to the Planning and Procedures Subcommittee for Calendar Year 1996.

3:45 P.M.–5:30 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on September 27, 1995 (60 FR 49925). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

The ACRS meeting dates for Calendar Year 1996 are provided below:

ACRS meeting No.	1996 ACRS meeting dates
428	February 8–10, 1996
429	March 7–9, 1996
430	April 11–13, 1996
431	May 23–25, 1996
432	June 20–22, 1996
433	August 8–10, 1996
434	September 12–14, 1996
435	October 10–12, 1996
436	November 7–9, 1996
437	December 5–7, 1996

Dated: November 20, 1995.

Andrew L. Bates

Advisory Committee Management Officer

[FR Doc. 95–28836 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 28, 1995, through November 9, 1995. The last biweekly notice was published on Wednesday, November 8, 1995 (60 FR 56361).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 27, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any

limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to *(Project Director):* petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: October 20, 1995.

Description of amendment request: The proposed one-time amendment would revise the Calvert Cliffs Nuclear Power Plant, Unit No. 1, (CC–1) Technical Specifications (TSs) by extending certain 18-month instrument surveillance intervals by a maximum of 39 days to March 31, 1996. The instruments involved are included in the reactor protective system, engineered safety features actuation system, power-operated relief valves, low-temperature overpressure protection system, remote shutdown instruments, post-accident monitoring, radiation monitoring, and containment sump level instruments.

The Commission issued Amendment No. 208 to Facility Operating License No. DRP–53 and Amendment No. 186 to Facility Operating License No. DRP–69 for the CC–1/2, respectively. The amendments permanently extended the surveillance intervals for the instruments described above from 18 months to 24 months after a specified number of the instruments had been replaced. The amendments were effective immediately and to be implemented on CC–2 within 30 days, but not implemented on CC–1 until its restart after the spring 1996 refueling outage. All of the instruments identified for replacement on CC–2 have been replaced, but those identified for replacement on CC–1 have not been replaced, thus, the reason for the later implementation date. The proposed one-time amendment is needed prior to Amendment No. 208 being implemented because of a change in the refueling schedule. The licensee has provided technical justification to allow operation for an additional short-time period of up to a maximum of 39 days.

CC–1 was initially scheduled to begin its refueling outage on February 16, 1996, which would have been within the time frame necessary to perform the required 18-month instrument surveillances currently required for the instruments identified above. The licensee has recently rescheduled the refueling outage for CC–1 to start March 15, 1996, several months after the initial amendment request and after consultation with the Pennsylvania-New Jersey-Maryland power pool. The revised schedule will allow the maximum use of the available fuel in the CC–1 reactor core and will also allow the unit to operate for an additional period of about 1 month during a period of potentially high power demand. In addition, the delay will allow more time to plan and prepare for the upcoming refueling outage. Performing the required instrument surveillances at power would present an unwarranted personnel safety risk and, in some cases, the surveillances cannot be done during power operation because they would cause a unit trip. This proposed one-time amendment will be superseded by Amendment No. 208 when it is implemented.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed one-time change would extend 18-month instrument surveillance intervals by a maximum of 39 days to March 31, 1996, for specific Reactor Protective System (RPS), Engineered Safety Features Actuation System (ESFAS), Power-Operated Relief Valve, Low Temperature Overpressure Protection (LTOP), Remote Shutdown, Post-Accident Monitoring (PAM), Radiation Monitoring, and Containment Sump Level instruments.

The purpose of the RPS is to effect a rapid reactor shutdown if any one or a combination of conditions deviates from a pre-selected operating range. The system functions to protect the core and the Reactor Coolant System (RCS) pressure boundary. The purpose of the ESFAS is to actuate equipment which protects the public and plant personnel from the accidental release of radioactive fission products if an accident occurs, including a loss-of-coolant accident, main steam line break, or loss of feedwater event. The safety features function to localize, control, mitigate, and terminate such incidents in order to minimize radiation exposure to the general public. The PAM instruments provide the Control Room operators with primary information necessary to take manual actions, as necessary, in response to design basis events, and to verify proper system response to plant conditions and operator actions. The purpose of the Remote Shutdown System is to provide plant parameter indications to operators on a Remote Shutdown Panel to be used while placing and maintaining the plant in a safe shutdown condition in the event the Control Room is uninhabitable. The indications are used to verify proper system response to plant conditions and operator actions. The LTOP System protects against RCS overpressurization at low temperatures

by a combination of administrative controls and hardware. Power-Operated Relief Valves are set to lift before pressurizer safety valves, and subsequently reseat to minimize the release of reactor coolant from the RCS. The Containment Sump High Level Alarm System provides an alarm in the Control Room to provide one of the available indications of excessive RCS leakage during normal plant operation. The Containment Area High Range Radiation Monitoring System provides an indication of high radiation levels in containment.

Failure of any of these systems is not an initiator for any previously evaluated accident. Therefore, the proposed change would not involve an increase in the probability of an accident previously evaluated.

Surveillance and maintenance history has demonstrated good capability for identifying adverse operation by individual instruments. Baltimore Gas and Electric Company has the capability to respond to an inoperable instrument by following the Technical Specification Actions for an inoperable instrument or by performing a channel calibration with the Unit at full power. However, calibration of all the instruments at power is not desirable because of personnel safety, personnel radiation protection goals, and plant reliability concerns.

These factors provide assurance that the requested surveillance extension will not adversely affect our ability to detect degradation of the instruments. Also, either analysis is available to show the instruments will operate properly during the requested surveillance extension, or the surveillance program has shown that problems will be identified and addressed appropriately. Therefore, these channels will be able to perform the functions assumed in the safety analysis, and there is no significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed Technical Specification changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

This requested increase in surveillance interval for RPS, ESFAS, Power-Operated Relief Valve, LTOP, Remote Shutdown, PAM, Radiation Monitoring, and Containment Sump Level instrument surveillances does not involve a significant change in the design or operation of the plant. No plant hardware is being modified as part of the proposed change. The proposed change also does not involve any new or unusual actions by plant operators. Therefore, this change would not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

The RPS, ESFAS, Power-Operated Relief Valve, LTOP, Remote Shutdown, PAM, Radiation Monitoring, and Containment Sump Level instruments are designed to provide actuation signals and/or indications to ensure appropriate action is taken in response to design basis accidents. Channel checks, channel functional tests and routine comparison of the redundant and independent parameter indications provides a reliable indication of instrument operation. Also, either analysis is available to show the instruments will operate properly during the requested surveillance extension, or instrument surveillance program has shown that problems will be identified and addressed appropriately. During the requested extension, these systems will be available to perform the functions assumed in the Safety Analysis. Surveillance and maintenance history have demonstrated good capability for identifying adverse operation by individual instruments. Baltimore Gas and Electric Company has the capability to respond to such adverse operation, including performing channel calibrations at power. However, such work on all the instruments is not desirable because of personnel safety, personnel radiation protection goals, and plant reliability concerns. Extending the surveillance interval provides additional possibility for instrument components to malfunction by means such as drift or instrument failure, which could allow plant parameters to exceed design bases assumptions. We have determined that the effect of the surveillance interval extension on safety is small, and operation of the instruments in the extended interval would not invalidate any assumption in the plant licensing basis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Date of amendment request: October 3, 1995.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) for both stations to implement 10 of the line item TS improvements recommended in Generic Letter (GL) 93–05, ''Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation,'' dated September 27, 1993. The proposed changes also include editorial changes on the affected TS pages.

The proposed changes from GL 93–05 are the following: (1) TS 4.1.3.1.2 (GL 93–05, Item 4.2), extending the interval for checking the operability of each full-length rod not fully inserted in the core from 31 days to 92 days; (2) Table 4.3–3 (GL 93–05, Item 5.14), extending the interval for the digital channel operational test for radiation monitoring instrumentation in the table from monthly to quarterly; (3) TS 4.4.3.2 (GL 93–05, Item 6.6), extending the interval between current tests of the required groups of pressurizer heaters from 92 days to each refueling outage; (4) TS 4.4.6.2.2.b (GL 93–05, Item 6.1), extending the time the plant may be in cold shutdown before pressure isolation valve testing is required, prior to entry into Operational Mode 2, from 72 hours to 7 days; (5) TS 4.5.1.1.b (GL 93–05, Item 7.1), revising the requirement to verify the boron concentration in an accumulator within 6 hours of any volume increase to the accumulator (greater than or equal to 70 gallons) so that the verification is not required when the volume increase is from the refueling water storage tank (RWST) and the RWST has not been diluted since verifying that the boron concentration of the RWST is within the concentration limits for the accumulators; (6) TS 4.6.2.1 (GL 93–05, Item 8.1), extending the interval between tests to verify each containment spray nozzle is unobstructed from 5 years to 10 years; (7) TS 4.6.4.1 (GL 93–05, Item 5.4), extending the interval for testing each hydrogen monitor for combustible gas control from 31 days to 92 days for the analog channel operational test, and from 92 days to each refueling outage for channel calibration; (8) TS 4.6.4.2 (GL 93–05, Item 8.5), extending the interval between tests to demonstrate operability of the hydrogen recombiner system from 6 months to once each refueling outage; (9) TS 4.7.1.2.1.a (GL 93–05, Item 9.1), extending the interval between tests of the auxiliary feedwater pumps from 31 days to 92 days on a staggered test basis; and (10) TS 4.11.2.6 (GL 93–05, Item 13), extending the interval for determining the quantity of radioactivity contained in each gas decay tank, when radioactivity is being added to the tanks, from 24 hours to 7 days, with the 24-hour frequency maintained during the primary coolant degassing operation. The editorial changes are the following: (1) TS 4.4.6.2.1.c, changes the word ''from'' to the word ''to,'' (2) TS 4.5.1.1.c, the

change clarifies that the motor control center compartment is for each accumulator isolation valve, (3) TS 4.5.1.2, deletes the footnote because the operating cycle in the footnote is over for each unit, and (4) TS 4.7.1.2.1.a.2 and 4.7.1.2.1.c, renumbers and rephrases (only TS 4.7.1.2.1.a.2) other surveillance requirements for the auxiliary feedwater pumps because of the proposed change to TS 4.7.1.2.1.a to implement GL 93–05, Item 9.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes are consistent with GL 93–05 and NUREG–1366 [''Improvements to Technical Specifications Surveillance Requirements,'' December 1992. In GL 93–05, the staff stated that it concluded, in performing the study documented in NUREG–1366, that safety can be improved, equipment degradation decreased, and an unnecessary burden on licensee personnel eliminated by reducing the frequency of certain testing required in the Technical Specifications during power operation]. The changes eliminate testing that is likely to cause transients or excessive wear of equipment. An evaluation of these changes indicates that there will be a benefit to plant safety. The evaluation, documented in NUREG–1366, considered (1) unavailability of safety equipment due to testing, (2) initiation of significant transients due to testing, (3) actuation of engineered safety features that unnecessarily cycle safety equipment, (4) importance to safety of that system or component, (5) failure rate of that system or component, and (6) effectiveness of the test in discovering the failure.

As a result of the decrease in the testing frequencies, the risk of testing causing a transient and equipment degradation will be decreased, and the reliability of the equipment will not be significantly decreased.

The initial conditions and methodologies used in the accident analyses remain unchanged. The proposed changes do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Therefore, accident analyses results are not impacted. Appropriate testing will continue to assure that equipment and systems will be capable of performing the intended function.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes either modify allowable intervals between certain surveillance tests, delete surveillance requirements, or alter an action statement with regard to the required testing. The proposed changes do not affect the design or operation of any system, structure, or component in the plant. The safety functions of the related structures, systems, or components are not changed in any manner, nor is the reliability of any structure, system, or component reduced by the revised surveillance or testing requirements.

Appropriate testing will continue to assure that the system is capable of performing its intended function. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure, system, or component. No new or different type of equipment will be installed. Since there is no change to the facility or operating procedures, and the safety functions and reliability of structures, systems, or components are not affected, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

All of the proposed technical specification changes are compatible with plant operating experience and are consistent with the guidance provided in GL 93–05 and NUREG–1366. The changes eliminate unnecessary testing that increases the risk of transients and equipment degradation. There is no impact on safety limits or limiting safety system settings.

The remaining proposed changes are administrative in nature and have no impact on the margin of safety of any technical specification. They do not affect any plant safety parameters or setpoints.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. 50–373, LaSalle County Station, Units 1, LaSalle County, Illinois

Date of amendment request: October 2, 1995

Description of amendment request: The proposed amendments would revise Section 3.4.2 to change the safety/relief valve (SRV) safety function lift setting tolerances from +1%, −3% to plus or minus 3% and include as-left SRV safety function lift setting tolerances of plus or minus 1%.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident previously evaluated will not increase as a result of this change, because the only changes are the tolerances for the SRV opening setpoints and the speed of the reactor core isolation cooling system (RCIC) turbine and pump. Changing the maximum allowable opening setpoint for the SRVs does not cause any accident previously evaluated to occur, or degrade valve or system performance in any way so as to cause an accident to occur with an increased frequency. In addition, the increased speed of the RCIC turbine and pump are within the design limits of the system. RCIC operability and failure probabilities are not impacted by this change.

The consequences of an ASME Overpressurization Event are not significantly increased and do not exceed the previously accepted licensing criteria for this event. General Electric (GE) has calculated the revised peak vessel pressure for LaSalle Station to be 1341 psig, which is well below the 1375 psig criterion of the ASME Code for upset conditions, referenced in Section 5.2.2, Overpressurization Protection, of the Updated Final Safety Analysis Report (UFSAR), and NUREG–0519 (Safety Evaluation Report related to the operation of LaSalle County Station, Units 1 and 2, March 1981), and Section 15.2–4, Closure of Main Steam Isolation Valves (BWR) of NUREG–0800 (Standard Review Plan).

GE has also performed an analysis of the limiting Anticipated Transient Without Scram (ATWS) event, which is the Main Steam Isolation Valve (MSIV) Closure Event. This analysis calculated the peak vessel pressure to be 1457 psig, which is sufficiently below the 1500 psig criterion of the ASME Code for emergency conditions.

Per NUREG–0519, listed above, Section 5.4.1, and Technical Specification 4.7.3.b, the RCIC pump is required to develop flow greater than or

equal to 600 gpm in the test flow path with a system head corresponding to reactor vessel operating pressure when steam is supplied to the turbine at 1000 +20, −80 psig. Increasing the turbine and pump speed ensures these criteria will still be met and the consequences of an accident will not increase.

Therefore, there is not a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The only physical changes are to increase the allowable tolerances for SRV opening setpoints and to increase the RCIC pump and turbine speeds. These changes do not result in any changed component interactions. The SRVs and RCIC will still provide the functions for which they were designed. Since all of the other systems evaluated will continue to function as intended, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

While the calculated peak vessel pressures for the ASME Overpressurization Event and the MSIV closure ATWS Event are larger than that previously calculated without the proposed setpoint tolerance increases, the new peak pressures remain sufficiently below the respective licensing acceptance limits associated with these events. In addition, the actual L1C8 reload analysis of the ASME Overpressurization Event will be verified to be within the licensing acceptance limit for that event prior to Unit 1 Cycle 8 startup, as required in the normal reload 10 CFR 50.59 process. These licensing acceptance limits have been previously evaluated as providing a sufficient margin of safety. For other accidents and transients, the increased setpoint tolerances have a negligible effect on the results, so the margin of safety is preserved.

The staff has reviewed the amendment request and the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 17, 1995.

Description of amendment request: The proposed amendment would modify the Palisades Facility Operating License to reference 10 CFR Part 40, allow the use of source materials as reactor fuel, delete references to specific amendments and specific revisions in the listed titles of the Physical Security Plan Suitability Training and Qualification Plan and the Safeguards Contingency Plan, delete paragraph 2.F on reporting requirements, and make minor editorial changes. In addition, the Technical Specifications (TS) would be modified as follows: (1) TS 3.1.2 would be modified to change the pressurizer cooldown limit from 100 °F to 200 °F/hour; (2) the shield cooling system requirements would be relocated to the Palisades Final Safety Analysis Report (FSAR); (3) several minor editorial changes to various sections of the TS are proposed; and (4) revisions to several TS bases pages are proposed.

Basis for proposed no significant hazards consideration determination As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Administrative Changes

Since these changes have no effect on the physical plant or its operation, they cannot involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any previously evaluated, or involve a significant reduction in a margin of safety.

Technical Changes

The following evaluation supports the finding that operation of the facility in accordance with the two non-administrative changes would not:

1. *Involve a significant increase in the probability or consequences of an accident previously evaluated.*

Use of Source Material as reactor fuel: The use of depleted or natural uranium, defined as ''Source Material'' by 10 CFR 40.4, in addition to the currently allowed ''slightly enriched uranium'' would not affect the physical plant or its operation in any way which could increase the probability of any previously evaluated accident. Its use would not introduce any new kind or additional amount of fission product material. Therefore, use of source material as reactor fuel would not affect the consequences of an accident previously evaluated.

Restoration of the Pressurizer Cooldown Rate Limit: The Palisades Technical Specifications contain a single limit, item 3.1.2 b, for both heatup and cooldown rates for the pressurizer. The October 5, 1994 change request proposed changing that limit from 200°F/hour to 100°F/hour solely due to its inconsistency with the pressurizer design analysis. Fatigue calculations in the pressurizer design analysis assumed a heatup rate of 100°F/hour and a cooldown rate of 200°F/hour. Until issuance of Amendment 163, the Technical specifications contained a single limit for both heatup and cooldown rates of 200°F/hour. Although the installed equipment is not capable of exceeding the 100°F/hour heatup limit, the October 5, 1994 change request proposed a revised limit to assure that the Technical Specification limit was not less restrictive than the design analysis. The higher pressurizer cooldown rate does not affect the results of our analyses which determined the PCS Pressure-Temperature limits or the [Loss of Temperature Overpressurization] LTOP setting requirements of the Technical Specifications.

When the change was proposed, it was not realized that the more limiting cooldown rate might adversely, and unnecessarily, affect plant operation. This proposed change to the Technical Specifications would separate the limits for heatup rate and cooldown rate, returning the specified cooldown rate to the original value which was consistent with plant design. The current heatup rate limit, which is also consistent with the design, would be retained. The proposed pressurizer cooldown rate will allow depressurizing of the primary coolant system [PCS] and flooding the pressurizer steam space without undue restriction. The more rapid depressurization would be important in the event of a steam generator tube rupture.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *Create the possibility of a new or different kind of accident from any previously evaluated.*

Use of Source Material as reactor fuel: The use of depleted or natural uranium, defined as ''Source Material'' by 10 CFR 40.4, in addition to the currently allowed ''slightly enriched uranium'' would not affect the design (other than the fuel enrichment), configuration, or operation of the plant. Therefore this change cannot create the possibility of a new or different kind of accident from any previously evaluated.

Restoration of the Pressurizer Cooldown Rate Limit: The proposed change to the Technical Specifications would bring the plant within the assumptions of the design documents for the pressurizer and in line with the Accident analysis for the rapid reduction of the primary coolant system pressure. With the lower rate specified in the present technical specification, the depressurization of the PCS will be delayed to maintain the lower pressurizer cooldown rate.

Therefore, operation of the facility in accordance with the proposed change to the

Technical Specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. *Involve a significant reduction in a margin of safety.*

Use of Source Material as reactor fuel: The use of depleted or natural uranium, defined as ''Source Material'' by 10 CFR 40.4, in addition to the currently allowed ''slightly enriched uranium'' would not affect the Safety Limits, Limiting Conditions for Operation or other operating limits, or the safety analyses which they support. Therefore, the margin of safety is unaffected.

Restoration of the Pressurizer Cooldown Rate Limit: The proposed change to the Technical Specifications would bring the plant in line with the design analysis. This will not reduce the margin of safety since the higher rate is the basis for the present margin of safety.

Therefore, the proposed change to the Technical Specifications would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Brian E. Holian, Acting.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of amendment request: September 20, 1995.

Description of amendment request: The proposed amendment would allow a one-time extension of the 18-month surveillance intervals contained in the Technical Specifications (TS) related to system testing, instrumentation calibration, component inspection, component testing, response time testing and logic system functional tests for various systems, components and instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The proposed TS changes involve a one-time only change in the surveillance testing intervals to facilitate a one-time only change in the Fermi 2 operating cycle. The proposed TS changes do not physically impact the plant nor do they impact any design or functional requirements of the associated systems. That is, the proposed TS changes do not significantly degrade the performance or increase the challenges of any safety systems assumed to function in the accident analysis. The proposed TS changes affect only the frequency of the surveillance requirements and do not impact the TS surveillance requirements themselves. In addition, the proposed TS changes do not introduce any new accident initiators since no accidents previously evaluated have as their initiators anything related to the change in the frequency of surveillance testing. Also, the proposed TS changes do not significantly affect the availability of equipment or systems required to mitigate the consequences of an accident because of other, more frequent testing or the availability of redundant systems or equipment. Furthermore, a historical review of surveillance test results support the above conclusions. Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. *The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The proposed TS changes involve a one-time only change in the surveillance testing intervals to facilitate the one-time only change in the Fermi 2 operating cycle. The propose TS changes do not introduce any failure mechanisms of a different type than those previously evaluated since there are no physical changes being made to the facility. In addition, the surveillance test requirements themselves will remain unchanged. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. *The proposed TS changes do not involve a significant reduction in a margin of safety.*

Although the proposed TS changes will result in an increase in the interval between some surveillance tests, the impact, if any, on system availability is small based on other, more frequent testing or redundant systems or equipment, and there is no evidence of any time dependent failures that would impact the availability of the systems. Therefore, the assumptions in the licensing basis are not impacted, and the proposed TS changes do not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Brian E. Holian, Acting.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 8, 1995.

Description of amendment request: The amendments would revise Technical Specification Section 3/4.4.8, Table 4.4–4, Table Notations, to allow the reactor coolant system gross specific activity measurement method to be changed from the current degassed method to a non-degassed, or pressurized dilution, method.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. The amendments will have no effect on the probability of the occurrence of any accident. It has been demonstrated that the results obtained by the pressurized dilution technique are statistically similar to results obtained by the degassed technique. Therefore, implemention of the new method will have no effect insofar as the accuracy of the NC [reactor coolant system] system specific activity determination is concerned. Therefore, there will be no effect upon any accident dose consequences.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No accident causal mechanisms will be affected by installation of the sampling equipment required by the pressurized dilution technique. Operation of the NC system itself will not be affected by the proposed change in sampling technique. All procedure changes required for implementation of the new sampling method will be made according to the provisions of 10 CFR 50.59. No impact on other areas of plant operations will be generated as a result of the new sampling method.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. No impact on any safety limits will result from the change in sample method from the degassed technique to the pressurized dilution technique. Several benefits will result from the change,

including fewer opportunities for valve mispositionings to occur, as well as reduced radiation exposure to Chemistry technicians. The proposed amendment is consistent with a similar amendment approved by the NRC for McGuire Nuclear Station (Amendment Nos. 66 and 47 for McGuire Units 1 and 2, respectively).

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: Herbert N. Berkow.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 7, 1995.

Description of amendment request: The proposed change would revise Technical Specification 3/4.5.1 SAFETY INJECTION TANKS (SITs) by increasing the specified range associated with SIT water level and nitrogen cover pressure.

The current limiting conditions for operation (LCO) for the SIT requires that four SITs be operable with a water volume in the range of 1679 cubic feet (78%) to 1807 cubic feet (83.8%) and a nitrogen cover pressure between 600 psig to 625 psig. The proposed change requests an expanded range of 925.6 cubic feet (40%) to 1807 cubic feet (83.8%) for SIT level and 600 psig to 670 psig for SIT pressure indicators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the facility in accordance with this change does not involve an increase in the probability of any accident. The SITs are used to mitigate the consequences of an accident and are not accident initiators.

The proposed change would actually decrease the consequence of events such as LOCA [loss of coolant accident] which would result in rapid RCS [reactor coolant system] depressurization.

By reducing SIT level, the initial nitrogen gas volume is increased which results in an increase in the SIT flow rate into the RCS for a given RCS pressure transient. This decreases the time required to fill the reactor vessel lower plenum after the end of blowdown. During refill, fuel cladding temperature increases rapidly due to insufficient cooling which is provided solely by rod to rod thermal radiation. Decreasing the refill time therefore, results in lower cladding temperature at the start of core reflood which results in lower Peak Cladding Temperature (PCT) during reflood.

Increasing the nitrogen cover pressure would also result in increased SIT flow rate and would be beneficial as described above.

Therefore, the proposed change will not involve a significant increase in the probability or consequence of any accident.

The proposed change will not create any new system connections or interactions. Thus, no new modes of failure are introduced. The increased range for SIT pressure and level is actually beneficial in maintaining lower PCT following a LOCA.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The impact of the proposed changes on the Waterford 3 FSAR [Final Safety Analysis Report] analyses have been evaluated. The AOR [Analysis of Record] shows that PCT and maximum cladding oxidation would increase slightly as a result of this change. However, they both remain below the acceptance criteria values of 2200 degrees fahrenhit and 17% for PCT and maximum cladding oxidation, respectively. The system capabilities to mitigate the consequences of accidents will be the same as they were prior to these changes.

Therefore, the proposed changes do[es] not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street NW, Washington, DC 20005–3502.

NRC Project Director: William D. Beckner.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: August 10, 1995

Description of amendment request: This amendment would incorporate certain improvements into the Three Mile Island, Unit 1 Technical Specifications consistent with the Standard Technical Specifications for Babcock and Wilcox plants. The requested changes would affect the reactor building isolation instrumentation, sampling frequency for the sodium hydroxide tank, and the surveillance requirements for the plant vital bus batteries.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment involves changes to the TMI–1 Technical Specifications [TS] which are consistent with the [Babcock & Wilcox] B&W Standard Technical Specifications ([R]STS), NUREG–1430. This change does not involve any change to system or equipment configuration. The proposed amendment revises certain surveillance requirements, or extends certain surveillance intervals. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed changes. Therefore, this change does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The change only involves changes to surveillance requirements that are consistent with RSTS or deletion of requirements which are not appropriate for TS. No new failure modes are created and thus the changes are bounded by accidents previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. These proposed changes involve deletions of requirements or changes in surveillance requirements consistent with the B&W RSTS. No operating limits are affected and no reduction in the margin of safety is involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: October 24, 1995.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Surveillance Requirement of Section 4.4.5.1, ''Steam Generators'' and the Bases for Section 3/4.4.5, ''Steam Generators.'' Typographical errors in Section 4.4.5.1.3.c.1 and Table 4.4–6 are also proposed to be corrected. The proposed amendment would defer the next required surveillance to inspect steam generator tubes from October 20, 1996, to the next refueling outage or no later than October 20, 1997, whichever is earlier.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

Pursuant to 10 CFR 50.92, NNECO [the licensee] has reviewed the proposed one-time change to extend the maximum allowable inspection interval for steam generator tubes from 24 months to 36 months. NNECO concludes that these changes do not involve a significant hazards consideration since the proposed change satisfies the criteria in 10 CFR 50.92(c). That is, the proposed changes do *not*:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

This change involves one-time deferment of the eddy current inspection of the steam generator tubes until the end of the next refueling outage following the thirteenth fuel cycle, but no longer than 12 months beyond the original due date for the inspection. The steam generator tubes have only been exposed to one operating cycle and are made of thermally treated Alloy 690, one of the most corrosion resistant material currently used in recirculating steam generators. Following the first full fuel cycle of operation, the steam generator tube inspection found the tubes to be in excellent condition (i.e., no repairs were required and there was no evidence of an active degradation mechanism). Accordingly, no significant tube degradation is expected by the end of the thirteenth fuel cycle. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

This one-time change, allowing the steam generator tubes to be examined at the end of the refueling outage following Cycle 13 does not alter the physical design, configuration, or method of operation of the plant. The extension of the inspection interval is not expected to result in significant steam generator tube degradation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

Steam generator tube degradation occurs primarily during operation. The change to extend the maximum allowable inspection interval for steam generator tubes from 24 months to 36 months will not significantly increase the total operating time during Cycle 13 (the plant was in an outage for at least 10 months of the 12 month extension). Therefore, there is no significant effect on the extent and severity of tube degradation. The improved corrosion resistance of the steam generators tubes (thermally treated Alloy 690) minimizes the threat of primary- and secondary-side corrosion. No indications of corrosion have been identified in inspections performed so far. Based on our assessment of the inspection data and corrosion potential, all tubes are expected to be within the Regulatory Guide 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes,'' limits by the end of Cycle 13. Also, correction of the typographical errors will improve the fidelity of the specification. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 1, June 14 and 29, July 14, 17, 18, and 26, 1995 with supplemental information provided by letter dated October 20, 1995.

Description of amendment request: Each proposed amendment would change the surveillance requirement frequency from the current once per 18-month interval to once per 24-month which is the current length of a Millstone Unit 3 refueling cycle. The changes pertain to the following equipment:

May 1, 1995, Flow Paths—Operating; Position Indication System; Rod Drop Time; Seismic Monitoring System; Loose Part Detection System; Quench Spray System; Containment Recirculation Spray System; Containment Isolation Valves. This notice supersedes the notice published in the Federal Register on June 6, 1995 (60 FR 29882) relating to containment isolation valves.

May 1, 1995, Steam Generator Tube Inspections; 10CFR50, Appendix J, Type B and Type C Tests.

June 14, 1995, AC Sources Operating; DC Sources Operating; Containment Penetration Conductor Overcurrent Protective Devices; Motor-Operated Valves Thermal Overload Protection.

June 29, 1995, Electric Hydrogen Recombiners; Auxiliary Feedwater System; Reactor Plant Component Cooling Water System; Service Water System; Snubbers.

July 14, 1995, ECCS Subsystems—Tavg Greater Than or Equal to 350 °F; pH Trisodium Phosphate Storage Baskets.

July 17, 1995, Supplementary Leak Collection and Release System; Control Room Emergency Ventilation System; Control Room Envelope Pressurization System; Auxiliary Building Filter System; Fuel Building Exhaust Filter System.

July 18, 1995, Reactor Coolant System.

July 26, 1995; Reactor Trip System Instrumentation; ESFAS Instrumentation; Remote Shutdown Instrumentation; Accident Monitoring Instrumentation; RCS Total Flow Rate; Process and Radiation Monitoring Instrumentation.

In addition, the specifications are changed from a five-column to a one-column format.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to surveillance requirements of the Millstone Unit No. 3 Technical Specifications extend the frequency for checking the operability of the affected components/equipment. The proposal would extend the frequency from at least once per 18 months to at least once each refueling interval (i.e., nominal 24-months).

Changing the frequency of surveillance requirements from at least once per 18 months to at least once each refueling interval does not change the basis for the frequency. The frequency was chosen because of the need to perform this verification under the conditions that apply during a plant outage, and to avoid the potential of an unplanned transient if the surveillances were conducted with the plant at power.

The proposed changes do not alter the intent or method by which the surveillances are conducted, do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions, and do not modify the manner in which the plant is operated. As such, the proposed changes in the frequency of surveillance requirements will not degrade the ability of the equipment/components to perform its safety function.

Additional assurance of the operability of the components/ equipment is provided by additional surveillance requirements (e.g., monthly or quarterly surveillances).

Equipment performance over the last four operating cycles was evaluated to determine the impact of extending the frequency of surveillance requirements. This evaluation included a review of surveillance results, preventive maintenance records, and the frequency and type of corrective maintenance. It concluded that there is no indication that the proposed extension could cause deterioration in the condition or performance of any of the subject components.

In addition to the substantive changes, there are format changes which are merely editorial and because format changes produce no physical change they do not influence the probability or consequences of accidents.

Since the proposed changes only affect the surveillance frequency for safety systems that are used to mitigate accidents, the changes cannot affect the probability of any previously analyzed accident. While the proposed changes can lengthen the intervals between surveillances, the increases in intervals has been evaluated and it is concluded that there is no significant impact on the reliability or availability of the safety system and consequently, there is no impact on the consequences on any analyzed accident.

2. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to surveillance requirements of the Millstone Unit No. 3 Technical Specifications extend the frequency for verifying the operability of the affected components/equipment. The proposal would extend the frequency from at least once per 18 months to at least once each refueling interval (nominal 24 months).

Changing the frequency of surveillance requirements from at least once per 18 months to at least once each refueling interval does not change the basis for the frequency. The frequency was chosen because of the need to perform this verification under the conditions that apply during a plant outage, and to avoid the potential of an unplanned transient if the surveillances were conducted with the plant at power.

In addition to the substantive changes, there are format changes which are merely editorial and because format changes produce no physical change they do not influence the probability of new or different types of accidents.

The proposed changes do not alter the intent or method by which the surveillances are conducted, do not involve any physical changes to the plant, do not alter the way any structure, system, or component functions, and do not modify the manner in which the plant is operated. As such, the proposed changes cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. The changes do not involve a significant reduction in a margin of safety.

The proposed changes to surveillance requirements of the Millstone Unit No. 3 Technical Specifications extend the frequency for verifying the operability of the components/equipment. The proposal would extend the frequency from at least once per 18-months to at least once each refueling interval (24-months).

In addition to the substantive changes, there are format changes which are merely editorial and because format changes produce no physical change they do not influence the margin of safety.

The proposed changes to surveillance frequency are still consistent with the basis for the frequency, and the intent or method of performing the surveillance is unchanged. Further, the current inservice testing requirements and the previous history of reliability of the system provides assurance that the changes will not affect the reliability of the auxiliary feedwater system. Thus, it is concluded that there is no impact on the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Phillip F. McKee.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: September 29, 1995.

Description of amendment requests: The amendments would add a one-time footnote to the Technical Specifications regarding the emergency diesel generator diesel fuel oil storage and transfer system to permit the existing storage tanks to be replaced with double walled tanks and piping that comply with new California regulations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Neither the emergency diesel generators (EDGs) nor the diesel fuel oil (DFO) storage and transfer system is an accident initiator. When performing the modifications to the

DFO storage tanks and transfer piping, administrative compensatory measures will be taken to reduce the potential challenge to the EDGs and to verify the operability of the DFO transfer system. A probabilistic risk assessment (PRA) was performed and demonstrates that the change in core damage frequency associated with taking each DFO storage tank and its associated suction transfer piping out of service for 60 days (total of 120 days for both trains) is not significant considering the compensatory measures which will be taken during the tank replacement period.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Neither the EDGs nor the DFO storage and transfer system is an accident initiator. Temporary DFO storage will be onsite during tank replacement. The fire protection guidelines in Appendix 9.5B of the Updated Final Safety Analysis Report will be complied with in order to ensure temporary DFO storage without risk to plant systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes considering implementation of the compensatory measures has been shown to not impair safe operation of the plant. Having one DFO storage tank and associated piping out of service does not reduce the margin of safety since temporary storage of DFO will be maintained onsite and administrative compensatory measures will be taken to minimize the potential impact of this condition. Additionally, delivery of DFO to the site is available within 24 hours if needed.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: October 4, 1995.

Description of amendment requests: The amendments would relocate the requirements in ten sub-sections of the Technical Specifications to licensee controlled documents in accordance with the guidance in the Commission's Final Policy Statement and the Commission's revisions to 10 CFR 50.36 (60 FR 36959, July 19, 1995) on the content of Technical Specifications and the Standard Technical Specifications, Westinghouse Plants, NUREG–1431, Rev. 1, dated April 1995. The ten sub-sections which the licensee proposes to relocate, without changes to the requirements, to the Updated Final Safety Analysis Report or other controlled documents relate to: boration system flow path, position indication system, rod drop time, seismic instrumentation, chlorine detection system, turbine overspeed protection, containment leakage, containment structural integrity, electrical equipment protective devices and containment penetration conductor overcurrent protective devices.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes simplify the Technical Specifications (TS), meet regulatory requirements for relocated TS, and implement the recommendations of the Commission's Final Policy Statement on TS Improvements and revised 10 CFR 50.36. Future changes to these requirements will be controlled by 10 CFR 50.59. The proposed changes are administrative in nature and do not involve any modifications to any plant equipment or affect plant operation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature, do not involve any physical alterations to any plant equipment, and cause no change in the method by which any safety-related system performs its function. Also, no changes to the operation of the plant or equipment are involved.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes involve relocating TS requirements to a licensee-controlled document. The requirements to be relocated were identified by applying the criteria endorsed in the Commission's Final Policy Statement, which is included in the new revision of 10 CFR 50.36, and are consistent with NUREG–1431, Rev. 1 (Reference 2). Thus, the proposed changes do not alter the basic regulatory requirements and do not affect any safety analysis.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: November 2, 1995.

Description of amendment request: The proposed amendment would revise Section 5.0, Administrative Controls, of the Trojan Nuclear Plant Technical Specifications, Appendix A to License NPF–1, to reflect changes in the organization of the Portland General Electric Company (PGE) as they apply to oversite and management of the Trojan Nuclear Plant.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. The requested license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes in management titles and reporting relationships are administrative in nature, do not alter the intent of the Possession Only License, and do not modify

the present plant systems or adminstrative controls necessary to preserve and protect the integrity of the nuclear fuel at the Trojan Nuclear Plant. The Trojan Site Executive and Plant General Manager will be located at the site and will continue to provide senior management attention to each of the functional areas in the Trojan Nuclear Plant organization during decommissioning of the facility.

The general classification of accidents for the permanently defueled condition are limited. The three classifications are (1) radioactive release from a subsystem or component, (2) fuel handling accident, and (3) loss of spent fuel decay heat removal capability. The probability of occurrences of consequences from these accidents remain unchanged and are bounded by the current accident analysis. Therefore, the requested changes do not involve a significant increase in the probability or occurrence of an accident previously evaluated.

2. The requested license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested amendment is administrative in nature, does not affect the manner in which systems and components are operated or maintained, and does not alter the intent of the Possession Only License. The accident scenarios associated with the permanently defueled condition are limited to (1) radioactive release from a subsystem or component, (2) fuel handling accident and (3) loss of spent fuel decay heat removal capability. There are no new accident scenarios or failure modes created by the requested administrative changes. Therefore the requested change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The requested license amendment does not involve a significant reduction in a margin of safety.

The requested amendment is administrative in nature, does not affect the manner in which systems and components are operated or maintained, does not alter the intent of the Possession Only License, nor does it adversely impact previously accepted margins of safety. Therefore, the requested amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRR Project Director: Seymour H. Weiss.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 7, 1995 as supplemented by letter dated October 27, 1995.

Description of amendment request: The proposed change to Hope Creek Technical Specifications (TSs) 4.8.1.1.2, ''A.C. Sources—Operating'', would replace the reference to a voltage and frequency band for the 10 second starting time test with a minimum required voltage and frequency that must be attained within 10 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident [* * *] previously evaluated.

Since no change is being made to the offsite power supplies, or to any system or component that interfaces with the offsite power supplies, there is no change in the probability of a Loss of Offsite Power Accident.

Since the proposed change still ensures the surveillance requirements meet the licensing basis and since the full spectrum of loading, unloading and standby testing performed at the 18 month frequency continues to demonstrate the capability of the diesel generators to satisfy onsite power requirements during simulated accident conditions while the monthly testing demonstrates availability, there is no change in the consequences of an accident.

Since the proposed change will eliminate unnecessary adjustments to the governor controls, the probability of malfunction is potentially reduced.

This change ensures the surveillance requirements reflect the design basis and provide a basis for consistent timing methodology. Since the proposed change is consistent with the intent of the existing specifications, and with the design basis of the system and since no physical changes are being proposed, no action will occur that will increase the probability or consequences of an accident or malfunction of equipment important to safety. The diesel generators will continue to function as stated in the UFSAR [Updated Final Safety Analysis Report].

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not result in any design or physical configuration changes to the offsite power supplies or to the diesel generators. Operation in accordance with the proposed change will not impair the diesel generators ability to perform as provided in the design basis. By eliminating unnecessary adjustments to the diesel generator governor control, performance during any accident is potentially enhanced. The diesel generators will continue to function as stated in the UFSAR. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

Since the proposed change does not involve the addition or modification of plant equipment, is consistent with the intent of the existing Technical Specifications, meets the intent of applicable Regulatory Guides, and is consistent with the design basis of the diesel generators and the UFSAR, no action will occur that will involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: M.J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street NW., Washington, DC 20005–3502.

NRC Project Director: John F. Stolz.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: September 29, 1995.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3/4.4.3, Safety Valves and Pilot Operated Relief Valve—Operating, and associated Bases 3/4.4.2 and 3/4.4.3, Safety Valves, to increase the lift setting of the pressurizer code safety valves (PSVs) to [equal to or less than] 2575 psig, which corresponds to a lift setting tolerance of +3% of the nominal lift pressure. Increasing the upper bound of the lift setting tolerance of the PSVs from +1% to +3% will allow normal surveillance testing of the PSVs to be within +3% of the nominal lift setpoint of 2500 psig, which is still acceptable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station (DBNPS), Unit No. 1 in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because increasing the PSV lift tolerance from +1% to +3% only affects the as-found tolerance of the PSVs. The initial setting tolerance will still be limited to +1%. No hardware modification will be done to the valves which could affect any accident initiators.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because increasing the PSV lift tolerance from +1% to +3% does not affect the radiological releases of any accident previously evaluated in the [Updated Safety Analysis Report] USAR. This is not a hardware modification and the reactor coolant pressure boundary integrity is unaffected.

2. Not create the possibility of a new kind of accident from any previously evaluated because increasing the PSV lift tolerance from +1% to +3% allows the PSVs to protect the reactor coolant pressure boundary from overpressure transients. This change only affects the allowable lift tolerance. The initial lift setting tolerance is still less than +1%. This change does not modify the valve hardware or alter the operation of the valves. The possibility of the valves spuriously opening during power operation will not be changed. The valve setpoint with a −3% lift tolerance is well above the normal operating conditions and the [reactor coolant system] RCS high pressure trip setpoint.

3. Not involve a significant reduction in a margin of safety because at the +3% lift tolerance the RCS pressure and the reactor thermal power are still within the USAR acceptance criteria for a control rod withdrawal at low power. This change ensures the Technical Specification lift setpoint tolerances are consistent with the requirements given in the [American Society of Mechanical Engineers] ASME Boiler and Pressure Vessel Code.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 21, 1994, as amended by letter dated October 23, 1995.

Description of amendment request: The proposed amendment would relocate the review and audit requirements of the On-site Review Committee (ORC) and Nuclear Safety Review Board (NSRB) contained in TS 6.5.1, TS 6.5.2 and TS 6.5.3 to the Operational Quality Assurance Manual (OQAM). In addition, the proposed amendment would delete reference to the Manager, Nuclear Safety and Emergency Preparedness in TS 6.2.3. A revision to the Index was proposed to reflect the relocations. This amendment request was previously published in the Federal Register on August 31, 1994 (59 FR 45036).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes are administrative and equivalent descriptions and requirements for these oversight committees are contained in the OQAM.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes do not involve any physical alterations to the plant. There is no new type of accident or malfunction created and the method and manner of plant operation will not change. The changes are administrative and equivalent descriptions and requirements for these oversight committees are contained in the OQAM.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety remains unaffected since no design change is made and plant operation remains the same. The changes are administrative and equivalent descriptions and requirements for these oversight committees are contained in the OQAM.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: William H. Bateman.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: October 17, 1995.

Description of amendment request: The proposed change would revise the Technical Specifications (TS) for the North Anna Power Station, Unit No. 2 (NA–2). Specifically, the proposed change would reduce from two to one the minimum number of steam generators (SGs) required to be opened for inspection during the first refueling outage following an SG replacement. TS surveillance requirements 4.4.5.0 through 4.4.5.5 for inspection of the SG tubes ensure that the structural integrity of this portion of the Reactor Coolant System will be maintained. Accordingly, the purpose of TS 4.4.5.1 is to require periodic sample inspections of SGs. The initial inspection after SG replacement combined with the subsequent inservice inspections serve to provide reasonable assurance of detection of structural degradation of the tubes. The proposed TS change does not affect or change this basis. However, the requirement that two SGs would be opened and inspected during the first refueling outage after SG replacement is considered unnecessary.

The NA–2 SGs were replaced during the first quarter of 1995. The purpose of SG replacement was to restore the integrity of the SG tubes to a level equivalent to new SGs. In reality, replacement SG components incorporate a large number of design improvements which reflect the ''state-of-the-art'' technology that currently exists for SG design. These design improvements will improve the long-term maintainability and reliability of the replacement SGs. These enhancements do not adversely affect the mechanical or thermal-hydraulic performance of the SGs. Thus, the replacement SGs are considered superior to the original SGs in terms of design and materials.

The proposed TS change does not affect or change any limiting conditions for operation (LCO) or any other surveillance requirements in the TS and the Basis for the surveillance requirement remains unchanged. An inspection of the minimum required number of tubes will still be performed

prior to returning the SGs to service. Although the proposed change reduces the number of SGs required to be opened for inspection, the minimum number of tubes required to be examined during the inspection is not being changed. Thus, the minimum inspected tube population size would not be changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have evaluated the proposed change against the criteria described in 10 CFR 50.92 and concluded that the proposed Technical Specifications change does not pose a significant hazards consideration.

[1] The proposed Technical Specifications change does not affect the assumptions, design parameters, or results of any UFSAR [Updated Final Safety Analysis Report] accident analysis and the proposed amendment does not add or modify any existing equipment. Therefore, the proposed Technical Specifications change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

[2] The proposed change to the Technical Specifications does not involve modifications to any of the existing equipment or affect the operation of any existing systems. The absence of any hardware or software changes means that the accident initiators remain unaffected, so no unique accident possibility is created. Therefore, the proposed Technical Specifications change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

[3] Although the proposed change will reduce the minimum number of steam generators required to be opened for inspection during the first refueling outage following steam generator replacement, the revised Technical Specification surveillance will continue to ensure that a sampling of steam generator tubes will be inspected. The operability of the steam generators will also continue to be verified by periodic inservice inspections. Therefore, since equipment reliability will be maintained, the proposed Technical Specifications change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: David B. Matthews.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 18, 1995.

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) 3.4, ''Steam and Power Conversion System,'' by modifying and clarifying the operability requirements for the main steam safety valves (MSSVs), the auxiliary feedwater (AFW) System, and the condensate storage tank system.

The proposed amendment would eliminate inconsistencies within TS Section 3.4 and provide the basis for acceptable operation of the Auxiliary Feedwater System below 15% reactor power. The proposed amendment supersedes in its entirety a previously submitted proposed amendment dated May 20, 1994, which was noticed in the Federal Register on September 28, 1994 (59 FR 49442).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Significant Hazards Determination for Proposed Changes to Technical Specification (TS) 3.4.a ''Main Steam Safety Valves''

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Currently, TS 3.4.a.1.A.2 requires five MSSVs to be operable prior to heating the reactor > 350 °F. The proposed change requires a minimum of two MSSVs per steam generator to be operable prior to heating the reactor coolant system > 350 °F, and five MSSVs per steam generator to be operable prior to reactor criticality. If these conditions cannot be met within 48 hours, within 1 hour action shall be initiated to achieve hot standby within 6 hours, achieve hot shutdown within the following 6 hours, and achieve and maintain the reactor coolant system temperature < 350 °F within an additional 12 hours.

The MSSVs are relied upon to function in each of the following USAR analyzed accidents: Reactor Coolant Pump Locked Rotor, Loss of External Electrical Load, Loss of Normal Feedwater, Uncontrolled Rod Cluster Control Assembly Withdrawal, Steam Generator Tube Rupture, and Anticipated Transients without Scram.

In a subcritical condition, two operable MSSVs are capable of relieving the maximum steam generated during these anticipated design basis transient events. Because this proposed TS requires all MSSVs to be operable prior to reactor criticality, there will be no adverse effect on the health and safety of the public.

In all cases, the relieving capacity of the MSSVs is sufficient to maintain steam pressures within safety analysis acceptable criteria, and reactor criticality is not permitted unless all MSSVs are operable. Therefore, there is no adverse effect on the health and safety of the public and no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating setpoints, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The USAR safety analysis assumes five MSSVs per steam generator are operable. However, as shown above, this change results in no steam generator overpressure event or increase in the radiological dose. Therefore, this change will not involve a reduction in the margin of safety.

Significant Hazards Determination for Proposed Changes to Technical Specification (TS) 3.4.b ''Auxiliary Feedwater System''

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Current TS 3.4.a.1.A.1 and TS 3.4.b governing auxiliary feedwater flow to the steam generators are being combined and titled, ''Auxiliary Feedwater System.'' This change is consistent with the format of ''Westinghouse Standard Technical Specifications,'' NUREG–1431. In addition to the formatting changes, a number of technical changes are being proposed. These are:

The correction of an inconsistency between current TS 3.4.a.1.A.1 and current TS 3.4.b.2.A.

The addition of a seven (7) day Limiting Condition for Operation (LCO) action statement for one inoperable steam supply to the turbine driven auxiliary feedwater pump.

A specification is being added to permit any of the following conditions with reactor power less than 15%, without declaring the corresponding AFW train inoperable: the AFW pump control switches located in the control room to be in the ''pullout'' position, flow control valves AFW–2A and AFW–2B to be in a throttled or closed position, and train cross-connect valves AFW–10A and AFW–10B to be in the closed position.

An inconsistency currently exists between current TS 3.4.a.1.A.1 and current TS

3.4.b.2.A. TS 3.4.a.1.A.1 requires the system piping and valves directly associated with providing auxiliary feedwater flow to the steam generators to be operable, with a corresponding 48 hour limiting condition for operation (LCO) action statement if this requirement is not met. TS 3.4.b.2.A allows one auxiliary feedwater pump to be inoperable for 72 hours. This arrangement can cause a conflict regarding which TS is applicable depending on which component in the auxiliary feedwater flowpath to the steam generators is inoperable. By moving all TS action statements to TS 3.4.b, the inconsistency between TS 3.4.a.1.A.1 and TS 3.4.b.2.A will be eliminated. The requirement to maintain the operability of the system piping and valves directly associated with providing auxiliary feedwater flow to the steam generators remains, but is being modified to prevent the removal of both AFW supply headers from service.

Proposed TS 3.4.b.2.C is being added to allow one steam supply to the turbine driven auxiliary feedwater pump to be inoperable for seven days. This addition is consistent with ''Westinghouse Standard Technical Specifications,'' NUREG–1431. The seven day completion time is reasonable based on the redundant steam supplies to the pump, the availability of the redundant motor-driven AFW pumps, and the low probability of an event occurring that requires the inoperable steam supply to the turbine driven AFW pump. For these reasons, this change will have no adverse effect on the health and safety of the public.

Proposed TS 3.4.b.6.A and B permit the AFW Pump control switches located in the control room to be placed in the ''pull out'' position and valves AFW–2A and AFW–2B to be in a throttled position when below 15% reactor power without declaring the corresponding AFW train inoperable. This change is proposed to resolve concerns regarding the cycling of the AFW pumps and the throttling of valves AFW–2A and AFW–2B during plant startups and shutdowns. Analysis shows that control room operators have a minimum of ten minutes to initiate auxiliary feedwater flow after a design basis accident with no steam generator dryout or core damage.

All accidents which rely on AFW flow for mitigation were reanalyzed to support this change. These analyses were completed assuming an initial power of 100%. However, a 15% reactor power restriction has been imposed on placing the AFW pump control switches located in the control room in the ''pull out'' position and throttling valves AFW–2A and AFW–2B. This restriction in effect limits use of TS 3.4.b.6 to plant startups, shutdowns and other low power operating conditions.

This change alters the assumptions of the safety analysis for the Small-Break Loss of Coolant Accident, the Steam Generator Tube Rupture and the Loss of Normal Feedwater due to their dependence on the AFW system to start and supply AFW for heat removal. To support this change, the Westinghouse Electric Corporation performed an analysis of the Small-Break Loss-of-Coolant Accident using the NOTRUMP code assuming ten minutes for operator action to initiate auxiliary feedwater. This analysis resulted in a Peak Cladding Temperature (PCT) of 1053 °F from an initial power level of 100%. In addition, all other acceptance criteria of 10 CFR 50.46 were met. This large margin to the 2200 °F PCT limit supports ten minutes for operator action to initiate auxiliary feedwater.

Furthermore, WPSC has analyzed the Loss of Normal Feedwater and the Steam Generator Tube Rupture Accident assuming delays in the initiation of auxiliary feedwater. The Loss of Normal Feedwater Accident with a ten minute delay in the initiation of Auxiliary Feedwater does not result in any adverse condition in the core. It does not result in water relief from the pressurizer safety valves, nor does it result in uncovering the tube sheets of the steam generators. Also, at all times the Departure from Nucleate Boiling Ratio (DNBR) remained greater than 1.30. The Steam Generator Tube Rupture Accident with no auxiliary feedwater flow was also analyzed. The results of this analysis indicate that neither steam generator empties of liquid and at least 20 °F of reactor coolant system subcooling is maintained throughout the transient. Also, there is no increase in the radiological dose to the public.

Ten minutes is an acceptable time for operator action because four independent alarms in the control room would initiate operator action to place the AFW pump control switches to the ''auto'' position and initiate AFW flow to the steam generators when necessary. These include two steam generator lo level alarms (one per steam generator), and two steam generator lo-lo level alarms (one per steam generator). Provisions also exist to add additional low level alarms on the plant process computer. In addition to these alarms, control room operators have twelve other indications of insufficient, or no, AFW flow to the steam generators. These indications include three auxiliary feedwater pump low discharge pressure alarms (one per AFW pump), two auxiliary feedwater flow meters (one per steam generator), two AFW pump motor amp meters (one per motor-driven AFW pump), two ''ESF in Pullout'' alarms (one per Engineered Safety Features train) and three pump running lights (one per AFW pump). The ten minutes for operator action was discussed in a telephone conversation between WPSC and Mr. R. Laufer (NRR). Ten minutes for operator action is further supported by Branch Technical Position EISCB 18. Scenarios have been completed on the KNPP simulator to support ten minutes for operator initiation of AFW flow. In all cases, operators manually initiated AFW flow within the allowed ten minutes.

Proposed TS 3.4.b.6.C permits valves AFW–10A and AFW–10B to be in the closed position when below 15% reactor power without declaring the turbine-driven AFW train inoperable. This change is being proposed to allow operational flexibility of the AFW system during startups and shutdowns. As described below, the operability of the turbine-driven auxiliary feedwater train is independent of the position of the valves AFW–10A and AFW–10B. However, the operability of this train is dependent on the ability of these valves to reposition.

The operability of the AFW system following a main steam line break (MSLB) was reviewed in our response to IE Bulletin 80–04. As a result of this review, requirements for the turbine-driven AFW pump were originally added to the Technical Specifications.

For all other design basis accidents, the two motor-driven AFW pumps supply sufficient redundancy to meet single failure criteria. In a secondary line break, it is assumed that the pump discharging to the intact steam generator fails and that the flow from the redundant motor-driven AFW pump is discharging out the break. Therefore, to meet single failure criteria the turbine-driven AFW pump was added to Technical Specifications.

The cross-connect valves (AFW–10A and AFW–10B) are normally maintained in the open position. This provides an added degree of redundancy above what is required for all accidents except for a MSLB. During a MSLB, one of the cross-connect valves will have to be repositioned regardless if the valves are normally open or closed. Therefore, the position of the cross-connect valves does not affect the operability of the turbine-driven AFW train. However, operability of the train is dependent on the ability of the valves to reposition.

For these reasons, this change will have no adverse effect on the health and safety of the public or significantly increase the probability or consequences of an accident previously evaluated in the USAR.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The auxiliary feedwater system is required to mitigate the consequences of an accident. The auxiliary feedwater system is not an accident initiator. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

This change alters the assumptions of the safety analysis for the Small-Break Loss-of-Coolant Accident, the Steam Generator Tube Rupture and the Loss of Normal Feedwater due to their dependence on the AFW system to start and supply AFW flow for heat removal. To support this change the Westinghouse Electric Corporation has performed an analysis of the Small-Break Loss-of-Coolant Accident using the NOTRUMP code assuming ten minutes for operator action to initiate auxiliary feedwater. This analysis resulted in a Peak Cladding Temperature (PCT) of 1053° F from an initial power level of 100%. In addition, all other acceptance criteria of 10 CFR 50.46 were met. This large margin to the 2200° F PCT limit supports ten minutes for operator action to initiate auxiliary feedwater.

Furthermore, WPSC has analyzed the Loss of Normal Feedwater and the Steam Generator Tube Rupture Accident assuming delays in the initiation of auxiliary feedwater. The Loss of Normal Feedwater Accident with a ten-minute delay in the initiation of Auxiliary Feedwater does not result in any adverse condition in the core.

It does not result in water relief from the pressurizer safety valves, nor does it result in uncovering the tube sheets of the steam generators. Also, at all times the Departure from Nucleate Boiling Ratio (DNBR) remained greater than 1.30. The Steam Generator Tube Rupture Accident with no Auxiliary Feedwater flow was also analyzed. The results of this analysis indicate that neither steam generator empties of liquid and at least 20° F of reactor coolant system subcooling is maintained throughout the transient. Also, there is no increase in the radiological dose to the public. For these reasons, these changes will not adversely affect the health and safety of the public or involve a significant reduction in the margin of safety.

As discussed in the safety evaluation, the operability of the turbine-driven AFW train is independent of the position of valves AFW–10A and AFW–10B. However, the operability of the train is dependent on the ability of these valves to be repositioned. Therefore, the proposed change has no impact on the accident analysis and no effect on the margin of safety.

Significant Hazards Determination for Proposed Administrative Changes to Section TS 3.4, ''Steam and Power Conversion System''

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not alter the intent or interpretation of the TS. Therefore, no significant hazards exist.

Additionally, the proposed change is similar to example C.2.e(i) in 51 FR 7751. Example C.2.e.(i) states that changes which are purely administrative in nature; i.e., to achieve consistency throughout the Technical Specifications, correct an error, or a change in nomenclature, are not likely to involve a significant hazard.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311–7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, PO Box 1497, Madison, Wisconsin 53701–1497.

NRC Project Director: Gail H. Marcus.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 18, 1995.

Description of amendment request: This license amendment would replace the current fuel oil volume requirement in the emergency diesel generator (EDG) day tank in Technical Specifications 3.8.1.1.b.1) and 3.8.1.2.b.1) with a fuel oil level requirement. Associated Surveillance Requirement 4.8.1.1.2.a.1) would also be changed to replace the requirement to visually check the fuel oil level in the day tank with a requirement to verify that the fuel oil transfer pump starts on low level in the day tank standpipe.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will increase the minimum amount of diesel fuel oil that the current specifications require to be maintained in the EDG day tanks for standby operation. This change reflects the level that has been administratively maintained since the beginning of plant operation. The proposed change will not affect the way the EDG is operated and does not affect the ability of the EDGs to perform their safety function. The surveillance requirement change is being made to more thoroughly reflect the method used to assure the tank level is being properly maintained. The proposed change will not require the EDG to be operated in a manner different than that for which it was designed. Therefore, the proposed change will not significantly increase the consequences of an accident or malfunction of equipment important to safety previously evaluated in the USAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no active components being added whose failure could prevent the EDG from functioning. There is no new type of accident or malfunction being created and the method and manner of plant operation remains unchanged. The safety design bases in the USAR have not been altered. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

No new or different accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of these changes. The method of operation of the EDGs is not being altered, and the fuel oil transfer pumps will continue to perform the same function they currently perform. Therefore, the possibility of a new or different kind of accident other than those already evaluated will not be created by this change.

3. The proposed change does not involve a significant reduction in a margin of safety.

There are no changes being made to any safety limits or safety system settings that would adversely impact plant safety. Although the minimum required amount of fuel oil specified in the Technical Specifications is being revised, this amount of fuel oil has been administratively controlled since the beginning of commercial operation. Thus, the operability of the emergency diesel generators has never been affected by this issue. Neither the method of operation of the EDGs nor their safety function are being altered by the proposed change. Therefore, the proposed change would not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 24, 1995.

Description of amendment request: This license amendment request proposes to revise Surveillance Requirement 4.7.6.e.4 to reflect a design change, scheduled to be installed during the next refueling outage, that would change the output rating of the charcoal filter adsorber unit heater in the pressurization portion of the control room emergency ventilation system (CREVS) from 15 kW to 5 kW. Proposed revisions to Surveillance Requirements 4.7.6.c.2 and 4.7.6.d are included which would change the acceptance criteria for the testing of carbon samples from the CREVS charcoal adsorbers. The proposal would adapt ASTM D 3803–1989 as the laboratory testing standard with the testing to be performed at 30 degrees Centigrade and 70 percent

relative humidity for a methyl iodide penetration of 2 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design function of the filter adsorber unit heater in the pressurization system portion of CREVS is to reduce the relative humidity of the air entering the charcoal filter beds to 70% relative humidity. Although the original design specified a heater with a rating of 15 kW, review of the design basis calculation for this system indicates that only 2.09 kW is actually required (including applicable margins to allow for voltage variations). The proposed change to the CREVS heaters' output rating from 15 kW to 5 kW will not affect the method of operation of the system, and the new heater capacity will still exceed filter operational requirements and safety margin. Neither the heater change nor the charcoal testing protocol changes will affect system operation or performance, nor do they affect the probability of any event initiators. These changes do not affect any Engineered Safety Features actuation setpoints or accident mitigation capabilities. Therefore, the proposed changes will not significantly increase the consequences of an accident or malfunction of equipment important to safety previously evaluated in the USAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested change to the CREVS heaters' output rating and the changes to the charcoal sample testing protocol will not affect the method of operation of the system, and the new heater capacity will still exceed filter operational requirements and safety margin by a significant amount. The proposed changes only affect the heater size in the system and the testing criteria for the charcoal samples. No new or different accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of these changes. Therefore, the possibility of a new or different kind of accident other than those already evaluated will not be created by this change.

3. The proposed change does not involve a significant reduction in a margin of safety.

The requested change to the CREVS heaters' output rating will reduce the heater output of the system, but the new heater capacity will still exceed filter operational requirements and safety margin by a significant amount. In addition, the reduction in heat load output from the heater will increase the design margin between the cooling capacity of the system air conditioning units and the building heat load. The new charcoal adsorber sample laboratory testing protocol is more stringent than the current testing practice and more accurately demonstrates the required performance of the adsorbers following a design basis LOCA [loss-of-coolant accident]. Therefore, these changes will not reduce the margin of safety of the CREVS filter operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 20, 1995.

Description of amendment request: The proposed amendment would modify the Appendix A Technical Specifications for the Engineered Safety Features Actuation System (ESFAS) Instrumentation. Specifically, the proposed amendment would revise the Seabrook Station Technical Specifications to relocate Functional Unit 6.b, ''Feedwater Isolation—Low RCS T_{avg} Coincident with a Reactor Trip'' from Technical Specification 3.3.2. ''Engineered Safety Features Actuation System Instrumentation'' to the Seabrook Station Technical Requirements Manual which is a licensee controlled document.

Date of publication of individual notice in Federal Register: October 24, 1995 (60 FR 54524).

Expiration date of individual notice: November 24, 1995.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 25, 1994, as supplemented by letter dated September 11, 1995.

Brief Description of amendments: The proposed amendments change the Technical Specifications to relocate the remaining Environmental Technical Specifications to other licensee-controlled documents and delete the 30-day reporting requirement for inoperable meteorological instrumentation.

Date of issuance: November 2, 1995.

Effective date: November 2, 1995.

Amendment Nos.: 179 and 210.

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 7, 1994 (59 FR 63113). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: May 13, 1993 as supplemented August 11 and September 20, 1995.

Brief description of amendments: The amendments revised Section 3/4.6.1.7 of the Technical Specifications, Containment Purge Ventilation System, to allow the simultaneous opening of the 8-inch miniflow purge supply and exhaust valves to ensure the containment atmosphere is conducive to human occupants and to maintain their dose as low as reasonably achievable.

Date of issuance: November 2, 1995.

Effective date: November 2, 1995.

Amendment Nos.: 76, 76, 68, and 68.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 15, 1993 (58 FR 48379). The August 11 and September 20, 1995, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 1, 1995, as supplemented on September 1 (two letters), September 2, September 4, September 8, September 15, September 19, September 20, September 22, October 3, October 7, October 11 (two letters), October 13 (three letters), October 23 and October 26, 1995.

Brief description of amendments: The amendments revise the steam generator (SG) repair criteria in the Byron, Unit 1 and Braidwood, Unit 1 Technical Specifications. These revisions add a set of voltage-based SG tube repair criteria different from those previously added by License Amendment No. 66, dated October 24, 1994, to the Byron 1 TSs and by License Amendment No. 54, dated August 18, 1994, to the Braidwood 1 TSs. The present set of voltage repair limits which are being added to the Byron 1 and Braidwood 1 TSs are applicable only for a specific form of SG tube degradation identified as outer diameter stress corrosion cracking (ODSCC) which is confined entirely within the thickness of the tube support plates (TSPs) in the SGs. The voltage-based repair criteria for the cold-leg side of the SGs for SG tubes with ODSCC indications and for SG tubes on the hot-leg side which show significant denting, are consistent with those provided in the NRC staff's guidance contained in Generic Letter 95–05, dated August 3, 1994.

The lower voltage repair limit for the SG tubes with ODSCC indications on the hot-leg side of the SGs have been raised from 1.0 to 3.0 volts as measured by a bobbin coil. All bobbin indications below 3.0 volts will be allowed to remain in service and all bobbin indications above this limit will be either repaired or removed from service by plugging.

This revision to the voltage repair limits on the hot-leg side reflects a methodology which is significantly different than that contained in GL 95–05. The principal difference between the methodology being applied for the 3.0 volt criteria on the hot-leg side is that the Commonwealth Edison Company (ComEd) is taking credit for the constraint provided by the TSPs to reduce the probability of SG tube burst in the event of a severe accident (i.e., a main steamline break). This constraint is assured by modifying a limited number of SG tubes so that they provide additional stiffness to the TSPs, thereby reducing to a small amount, their deflection under MSLB blowdown loads.

Additionally, inspection and reporting requirements are being added to the Byron 1 and Braidwood 1 TSs in support of the revised voltage-based repair criteria. Further, the maximum permissible value of the iodine-131 concentration in the primary coolant in the Byron 1 TSs is reduced from 1.0 to 0.35 microcuries per gram of coolant. This is the same value for the iodine-131 primary coolant concentration in the Braidwood 1 TSs. Finally, the Bases sections in the Byron 1 and Braidwood 1 TSs are revised to provide a concise description of the methodology proposed by ComEd in support of its proposed revision of the voltage-based SG tube repair criteria.

Date of issuance: November 9, 1995.

Effective date: November 9, 1995.

Amendment Nos.: 77, 77, 69, and 69.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 27, 1995 (60 FR 49963).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 1995. The supplemental submittals listed above provide clarifying technical information that does not affect the initial No Significant Hazards Consideration Determination.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: July 5, 1995.

Brief description of amendment: This amendment revises Section 6.0 of the Technical Specifications to incorporate several administrative controls and editorial changes to the Training, Plant Review Committee, and Plant Safety and Licensing staff sections.

Date of issuance: November 3, 1995.

Effective date: November 3, 1995.

Amendment No.: 170.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39435).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 10, 1995.

Brief description of amendments: The amendments revise the required number of operable hydrogen igniters to allow removal of two hydrogen igniters serving the lower reactor cavity and incore instrument cable tunnel.

Date of issuance: October 30, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 136 and 130.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 27, 1995 (60 FR 49932).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 13, 1995.

Brief description of amendments: The amendments modify the notation for the overpower delta temperature reactor trip heatup setpoint penalty coefficient as delineated in Note 3 in Technical Specification Table 2.2–1 in order to make the nomenclature consistent with the Standard Technical Specifications and to facilitate a modification to reduce the reactor coolant system hot leg temperature as planned during the Catawba Unit 2 end-of-cycle 7 refueling outage.

Date of issuance: October 31, 1995.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 137 and 131.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 27, 1995 (60 FR 49933).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 31, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 1, 1995, as supplemented October 17, 1995.

Brief description of amendments: The amendments revise Technical Specification (TS) 6.9.1.9 to include references to updated or recently approved methodologies used to calculate cycle-specific limits contained in the Core Operating Limits Report. The subject references have been reviewed and approved by the NRC staff.

Date of issuance: November 2, 1995.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 138 and 132.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 27, 1995 (60 FR 49932). The October 17, 1995, letter provided clarifying information that did not change the scope of the September 1, 1995 application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: June 13, 1994, as supplemented by letters dated August 15, 1994, March 23, April 18, July 21, and September 22, 1995.

Brief description of amendments: The amendments revise the Technical Specifications to increase the initial fuel enrichment limit and establish new loading patterns for new and irradiated fuel in the spent fuel pool to accommodate this increase.

The March 23, 1995, supplement, which provided additional information that modified the June 13, 1994, application's no significant hazards consideration determination, also revises the TS to (1) change the surveillance requirement for boron concentration in the spent fuel pool (SFP), (2) remove the option to use alternate storage configurations in the SFP and replace it with footnotes, (3) add information contained in the Bases to the footnotes, and (4) change the Bases to discuss the option to use specific analyses on alternate fuel.

Date of issuance: November 6, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 159 and 141.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 15, 1995 (60 FR 8746); and May 8, 1995 (60 FR 22590). The April 18, July 21, and September 22, 1995, letters provided additional clarifying information that did not change the scope of the June 13, 1994, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 6, 1995, and Environmental Assessment dated August 17, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: May 17, 1995.

Brief description of amendment: The amendment will extend the applicability of the current Reactor Coolant System (RCS) Pressure/Temperature Limits and maximum allowed RCS heatup and cooldown rates to 23.6 Effective Full Power Years (EFPY) of operation. In addition, administrative changes were proposed for TS 3.1.2.1 (Boration Systems Flow Paths-Shutdown) and TS 3.1.2.3 (Charging Pump-Shutdown) to clarify the conditions for which a High Pressure Safety Injection pump may be used.

Date of Issuance: October 27, 1995.

Effective Date: October 27, 1995.

Amendment No.: 141.

Facility Operating License No. DPR–67: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 21, 1995 (60 FR 32362).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: February 28, 1994.

Brief description of amendments: The amendments delete the minimum frequency criteria prescribed for quality assurance audits from Administrative Controls sections 6.5.2.8 and 6.8.4 of the Technical Specifications (TS). Audit periodicity will thereby be controlled by the program described in the Florida Power and Light Company (FPL) Topical Quality Assurance Report.

Date of Issuance: October 25, 1995.

Effective Date: October 25, 1995.

Amendment Nos.: 140 and 80.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 13, 1994 (59 FR 17599).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: July 26, 1995.

Brief description of amendments: These amendments revise selected line items from NRC Generic Letter 93–05, ''Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation.''

Date of issuance: October 17, 1995.

Effective date: October 17, 1995.

Amendment Nos.: 177 and 171.

Facility Operating Licenses Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 13, 1995 (60 FR 47617).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 10, 1993.

Brief description of amendment: The amendment revises the Cooper Nuclear Station Technical Specifications to change the reporting frequency of the Radioactive Materials Release Report from semiannual to annual and to extend the reporting frequency of the Annual Design Change Report from annual to annually or along with the Updated Safety Analysis Report updates required by 10 CFR 50.71(e). This change reflects revised requirements contained in 10 CFR 50.36a and 10 CFR 50.59(b).

Date of issuance: November 3, 1995.

Effective date: November 3, 1995.

Amendment No.: 172.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 16, 1994 (59 FR 7691).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated Novemver 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 28, 1995.

Brief description of amendment: The amendment revises the Cooper Nuclear Station Technical Specifications to increase the required reactor pressure vessel boron concentration, to modify the surveillance frequency for standby liquid control system pump operability testing from monthly to quarterly, and to make editorial changes.

Date of issuance: November 8, 1995.

Effective date: November 8, 1995.

Amendment No.: 173.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39441).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 5, 1995.

Description of amendment request: The amendment modifies the Appendix A Technical Specifications (TSs) for the Turbine Cycle Safety Valves. Specifically, the amendment changes Seabrook Station Appendix A Technical Specification Table 3.7–1 to reduce the Maximum Allowable Power Range Neutron Flux—High Setpoints with Inoperable Main Steam Safety Valves (MSSVs) and Table 3.7–2 to reduce the opening setpoints of the MSSVs. Bases Section 3/4.7.1.1 is changed to include the algorithm used for determining the new setpoint values.

Date of issuance: November 2, 1995.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 43.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 2, 1995 (60 FR 51505).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: December 21, 1994, as supplemented February 22, 1995.

Brief description of amendment: The amendment revises the License Condition C.(3), Fire Protection, and certain of the Technical Specifications (TS) related to fire protection requirements. The amendment changes the TS by relocating them to another controlled document, the Technical Requirements Manual referenced in the Final Safety Analysis Report.

Date of issuance: November 3, 1995.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 191.

Facility Operating License No. DPR–65: Amendment revised the License and Technical Specifications.

Date of initial notice in Federal Register: February 1, 1995 (60 FR 6303) The February 22, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 31, 1995.

Brief description of amendment: The amendment revises the Technical Specifications to remove the phrase ''other than Millstone Unit No. 2'' from the Administrative Controls Section 6.3.1, Item (a). This relates to Amendment No. 178 that changed the Technical Specifications to require an individual who serves as the Operations Manager to either hold a Millstone Unit 2 Senior Reactor Operator (SRO) license or have held an SRO license at another pressurized water reactor other than the Millstone Unit No. 2. If the Operations Manager does not hold a Millstone Unit No. 2 SRO license, then an individual serving as the Assistant Operations Manager would be required to possess an SRO license at Millstone Unit 2.

Date of issuance: November 2, 1995.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 190.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 27, 1995 (60 FR 49941).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: January 27, 1995.

Brief description of amendments: The amendments change the Limerick Generating Station Units 1 and 2 Technical Specifications (TS) by eliminating the TS active safety function designation of eight (i.e., four per unit) Drywell Chilled Water System valves.

Date of issuance: October 30, 1995.

Effective date: October 30, 1995.

Amendment Nos.: 103 and 67.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 26, 1995 (60 FR 20524).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: November 23, 1994, as supplemented by letter dated August 31, 1995.

Brief description of amendment: The proposed changes to the Technical Specifications (TSs) revise TS 4.8.2.1, ''Electrical Power Systems—D.C. Sources,'' Surveillance Requirements, and associated Bases Section 3/4.8.2.

Date of issuance: October 31, 1995.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 87.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39449). The August 31, 1995, letter provided additional and clarifying information that did not change the scope of the November 23, 1994, application and the initial proposed no significant consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: November 28, 1994.

Brief description of amendment: This amendment revises the technical specifications for the Reactor Coolant System recirculation flow upscale trip function to change the trip setpoint and allowable value to reflect 105% of rated core flow, item one of the above application.

Date of issuance: October 31, 1995.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 86.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 2, 1995 (60 FR 39450).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: March 30, 1995, as supplemented August 18, 1995.

Brief description of amendments: The amendments eliminate the defined term CONTROLLED LEAKAGE, remove Controlled Leakage flow from the Reactor Coolant System Operational Leakage Limiting Condition for Operation (LCO) and establish a new Seal Injection Flow LCO.

Date of issuance: October 30, 1995.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 178 and 159.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 10, 1995 (60 FR 24918). The August 18, 1995, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: August 1, 1995, as supplemented by letter dated October 18, 1995.

Brief description of amendments: These amendments revise Technical Specification (TS) 3/4.3.2, ''Engineered Safety Features Actuation System Instrumentation,'' Table 3.3–3. Table 3.3–3 includes the requirements for the minimum number of toxic gas isolation system (TGIS) trains operable. These amendments are a one-time-only change to extend the allowed TGIS outage times during the replacement of the existing TGIS instrumentation.

Date of issuance: November 2, 1995.

Effective date: November 2, 1995, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—Amendment No. 126; Unit 3—Amendment No. 115.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 13, 1995 (60 FR 47625). The October 18, 1995, supplemental letter provided clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: September 30, 1993 (TS–337).

Brief Description of amendment: The amendments revise the operating license to reflect issuance of a safety evaluation dated November 2, 1995 accepting the revised Appendix R Safe Shutdown Program to accommodate simultaneous power operation of Browns Ferry Units 2 and 3.

Date of issuance: November 2, 1995.

Effective Date: November 2, 1995.

Amendment Nos.: 226, 241 and 200.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 5, 1994 (59 FR 629).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: None.

Local Public Document Room Location: Athens Public library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: January 4, 1995 (TS 355).

Brief Description of amendment: The amendments revise applicability and surveillance requirements for the intermediate power range monitor, average power range monitor (APRM), and APRM Inoperative Trip functions.

Date of issuance: November 2, 1995.

Effective Date: November 2, 1995.

Amendment Nos.: 227, 242 and 201.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 6, 1995 (60 FR 29888).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: None.

Local Public Document Room Location: Athens Public library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: June 2, 1995 (TS 361/371).

Brief Description of amendment: The amendments revise the operability definition for residual heat removal service water components for use as a standby coolant supply. The amendments also incorporate related changes to the technical specification Bases which were submitted on October 2, 1995.

Date of issuance: November 2, 1995.

Effective Date: November 2, 1995.

Amendment Nos.: 225, 240 and 199.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 16, 1995 (60 FR 42610).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1995.

No significant hazards consideration comments received: None.

Local Public Document Room Location: Athens Public library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: May 19, 1995; revised September 11, 1995 (TS 95–13).

Brief description of amendment: The amendment modifies License Condition 2.C.(17) by extending the required surveillance interval to May 18, 1996, for Surveillance Requirement 4.3.2.1.3 for certain specified engineered safety features response time tests.

Date of issuance: October 30, 1995.

Effective date: October 30, 1995.

Amendment No.: 204.

Facility Operating License No. DPR–79: Amendment revises the operating license.

Date of initial notice in Federal Register: June 21, 1995 (60 FR 32372); renoticed September 27, 1995 (60 FR 49948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1995.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 15th day of November 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Deputy Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28606 Filed 11–24–95; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21506; International Series Release No. 886; File No. 812–9704]

Banque OBC—Odier Bungener Courvoisier and ABN AMRO Bank N.V.; Notice of Application

November 17, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Banque OBC—Odier Bungener Courvoisier (''Banque OBC'') and ABN AMRO Bank N.V. (the ''Bank'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicants from section 17(f) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit Banque OBC, a subsidiary of the Bank, to act as custodian for investment company assets in The Netherlands.

FILING DATE: The application was filed on August 3, 1995 and amended on October 26, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 12, 1995 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicants, Banque OBC—Odier Bungener Courvoisier, 57 Avenue D'Iena, 75116 Paris, France; ABN AMRO Bank N.V., Foppingadreef 22, 1102 BS Amsterdam, The Netherlands, c/o Edward G. Eisert, Schulte Roth & Zabel, 900 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Bank is a Netherlands banking organization. ABN AMRO Holding N.V. (''Holding'') is the parent company of the Bank, and together with their other domestic and international subsidiaries and affiliates, they constitute the ''ABN AMRO Group.'' As of December 31, 1994, Holding held approximately 100% of the share capital of the Bank, and the Bank accounted for approximately 100% of the total assets of Holding. Both Holding and the Bank are regulated in The Netherlands by De Nederlandsche Bank N.V., the Dutch Central Bank, on behalf of The Netherlands Minister of Finance. At July 31, 1994, Holding ranked 18th in the world, 6th in Europe and 1st in The Netherlands in terms of assets among bank holding companies. At December 31, 1994, Holding had shareholders' equity of approximately U.S. $11.9 billion.

2. Banque OBC, a wholly-owned subsidiary of the Bank, is a French banking institution providing commercial banking, private banking, asset management and merchant banking services to a clientele composed of high net worth individuals, large and medium sized corporations and foreign institutions. Banque OBC is governed by the French Banking Law and is authorized to act, and is monitored by, the Minestere de l'Economie et des Finances, the Banque de France (France's Central Bank) and the Commission Bancaire (France's banking commission). Banque OBC does not meet the minimum shareholders' equity requirement of rule 17f–5.

3. Applicants request an order to permit Banque OBC to maintain custody of securities (''Securities'') of investment companies registered under the Act other than those registered under section 7(d) of the Act (''U.S. Investment Companies''). As used herein, the term ''Securities'' does not include securities issued or guaranteed by the Government of the United States or by any state or any political subdivision thereof, or any agency thereof, or by any entity organized under the laws of the United States or any state thereof (other than certificates of deposit, evidences of indebtedness and other securities, issued or guaranteed by an entity so organized which have been issued and sold outside the United States).

4. Banque OBC would accept deposits of Securities in France only in accordance with a three-party contractual agreement (the ''Agreement''). Each Agreement will be a three-party agreement among (a) the Bank, (b) Banque OBC, and (c) a U.S. Investment Company or its custodian. The Agreement would provide that Banque OBC would provide custodial or sub-custodial services, and the Bank would be liable for any loss to the same extent as if the Bank had been required to provide custody services under such Agreement.

Applicants' Legal Analysis

1. Section 17(f) of the Act provides that a registered investment company may maintain securities and similar assets in the custody of a bank meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines ''bank'' to include banking institutions organized under the laws of the United States, member banks of the

Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. Banque OBC does not fall within the definition of ''bank'' as defined in the Act and, under section 17(f), may not act as custodian for registered investment companies.

2. Rule 17f–5 under the Act permits certain entities located outside the United States to serve as custodians for investment company assets. Rule 17f–5(c)(2)(i) defines the term ''Eligible Foreign Custodian'' to include a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof, and that has shareholders' equity in excess of U.S. $200 million.

3. The Bank qualifies as an eligible foreign custodian under rule 17f–5. Banque OBC, however, does not qualify as an eligible custodian because it does not meet the minimum shareholders' equity requirement. Accordingly, Banque OBC is not an eligible foreign custodian and, absent exemptive relief, could not serve as a custodian for U.S. Investment Company Securities.

4. Applicants request an order under section 6(c) of the Act that would exempt them from section 17(f) to the extent necessary for Banque OBC to maintain custody of U.S. Investment Company Securities. Applicants believe that the exemption is necessary and appropriate in the public interest because it would permit U.S. Investment Companies and their custodians to have direct access to the custody services of Banque OBC, and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because the Agreement provides U.S. Investment Companies with the safety and security of an eligible foreign custodian under section 17(f) and rule 17f–5.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements with Banque OBC will comply with the provisions of rule 17f–5 in all respects, except those provisions relating to the minimum shareholders' equity requirement for eligible foreign custodians.

2. The Bank satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

3. A U.S. Investment Company or a custodian for a U.S. Investment Company will deposit Securities with Banque OBC only in accordance with an Agreement that will remain in effect at all times during which Banque OBC fails to meet the requirement of rule 17f–5 relating to minimum shareholders' equity. Each Agreement will be a three-party agreement among (a) the Bank, (b) Banque OBC, and (c) a U.S. Investment Company or the custodian of the Securities of the U.S. Investment Company. Under the Agreement, Banque OBC will undertake to provide specified custodial or sub-custodial services. The Agreement will further provide that the Bank will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Banque OBC of its responsibilities under the Agreement to the same extent as if the Bank had been required to provide custody services under such Agreement. Under the Agreement, neither Banque OBC nor the Bank would be liable for any losses that result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and other risks of loss (excluding the bankruptcy or insolvency of Banque OBC) for which Banque OBC would not be liable under rule 17f–5 (*e.g.,* despite the exercise of reasonable care, loss due to acts of God, nuclear incident, and the like).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28791 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 21505; 811–6583]

International Growth Trust; Notice of Application

November 17, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICNAT: International Growth Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on August 14, 1995, and amended on October 31, 1995 and November 9, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 12, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, 99 Park Avenue, New York, New York 10016.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company formed as a trust under New York law. Applicant is a ''master fund'' in a ''master/feeder fund'' complex and has two shareholders: a ''feeder'' fund, the International Growth Fund (the ''Fund''), and applicant's investment adviser, VanEck Associates Corporation (the ''Adviser'').

2. SEC records indicate that applicant registered under the Act on March 3, 1992 by filing a notification of registration on Form N–8A pursuant to section 8(a) of the Act. Also on that date, applicant filed a registration statement on Form N–1A pursuant to section 8(b) of the Act. No registration was made under the Securities Act of 1933 (the ''Securities Act'') because applicant's beneficial interests were issued solely in private placement transactions that did not involve any ''public offering'' within the meaning of section 4(2) thereof. All of applicant's investors were ''accredited investors'' within the meaning of Regulation D under the Securities Act.

3. At a meeting held on October 18, 1994, applicant's board of trustees approved a plan of liquidation. The Fund's proxy materials indicate that,

because the Fund was applicant's only feeder fund, and because sales of the Fund's shares dropped dramatically, applicant liquidated.

4. Proxy materials were filed with the SEC and mailed to shareholders. The Fund's shareholders approved the liquidation plan at the meeting on December 19, 1994.

5. On December 30, 1994, applicant redeemed the units held by the Fund and the Adviser, satisfied the known obligations, and distributed the liquidation value in cash to the Fund and the Adviser. The liquidation was based on net asset value.

6. The Adviser paid applicant's unamortized organization expenses and the expenses relating to applicant's liquidation. No brokerage commissions were paid in connection with the liquidation.

7. Applicant has no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

8. Applicant will file a Certificate of Dissolution and/or other appropriate documentation, as required by New York law.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28792 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26411]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 17, 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 December 18, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 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.

Columbia Gas System, Inc., et al. (70–8471)

Columbia Gas System, Inc. (''Columbia''), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company; Columbia Gas of Maryland, Inc. (''Columbia Maryland''), 200 Civic Center Drive, Columbus, Ohio 43215, a natural gas subsidiary company of Columbia; eighteen other subsidiary companies of Columbia;[1] and twelve subsidiary companies of TriStar Ventures[2] have filed a post-effective amendment to the application-declaration previously filed under sections 6, 7, 9(a), 10, 12(b), 12(c), and 12(f) of the Act and rules 42, 43, 45, and 46 thereunder.

By order dated December 22, 1994 (HCAR No. 26201) (''Order''), Columbia Maryland was authorized through 1996 to sell to Columbia securities (''Installment Notes'') in an aggregate amount of up to $5.5 million. Columbia and Columbia Maryland now propose to change the type of securities Columbia Maryland will sell to Columbia (''New Notes'') and, in order to refinance all previously issued Installment Notes, increase the amount of New Notes to be sold to $19.5 million.

Columbia and Columbia Maryland seek Commission authorization (i) for the sale of New Notes by Columbia Maryland to Columbia on or around December 31, 1995, the proceeds of which will be used to refund the Installment Notes and (ii) for the future issuance of New Notes to meet the capital needs of Columbia Maryland in 1996. The New Notes will be issued under a loan agreement between Columbia Maryland and Columbia.

On or around December 31, 1995, Columbia Maryland will refund all Installment Notes sold to Columbia, which total approximately $14.0 million. Columbia Maryland will refund the Installment Notes before New Notes are sold under the Order.

Based on current interest rates, the New Notes will have a weighted average interest rate lower than the weighted average interest rate of the Installment Notes currently outstanding. The maturities and interest rates of the New Notes will mirror those for the debentures issued by Columbia upon emergence from bankruptcy. The Commission approved Columbia's reorganization plan in Holding Co. Act Release No. 26361. The New Notes will be issued pursuant to a loan agreement in certificated form, will be secured or unsecured, and will be dated the date of their issue.

Columbia Maryland plans to finance part of its 1996 capital expenditure program with the sale of the New Notes. The interest rate and maturity on the New Notes will be equal to the weighted average cost of any long-term fixed rate financing issued by Columbia issued during the calendar quarter prior to an issuance of New Notes by Columbia Maryland (''Columbia Rate'').

If Columbia does not issue long-term fixed rate financing during a calendar quarter prior to an issuance of New Notes, the interest rate will default to the Benchmark Rate defined in the original application-declaration. The Benchmark Rate would be used for all New Notes issued in the subsequent quarter. The New Notes will be repaid

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[1] Columbia Gas of Pennsylvania, Inc., 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Ohio, Inc., 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Kentucky, Inc., 200 Civic Center Drive, Columbus, Ohio 43215; Commonwealth Gas Services, Inc., 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Co., 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia Gas Development Corp., One Riverway, Houston, Texas 77056; Columbia Natural Resources, Inc., 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Coal Gasification Corp., 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corp., 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gas System Service Corp., 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Propane Corp., 800 Moorefield Park Drive, Richmond, Virginia 23236; Commonwealth Propane, Inc., 800 Moorefield Park Drive, Richmond, Virginia 23236; TriStar Ventures Corp. (''TriStar Ventures''), 20 Montchanin Road, Wilmington, Delaware 19807; TriStar Capital Corp., 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Atlantic Trading Corp., 20 Montchanin Road, Wilmington, Delaware 19807; Columbia LNG Corp., 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Gas Transmission Corp., 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; and Columbia Energy Marketing Corp., 2581 Washington Road, Pittsburgh, Pennsylvania 15241.

[2] TriStar Pedrick Limited Corporation, TriStar Pedrick General Corporation, TriStar Binghamton Limited Corporation, TriStar Binghamton General Corporation, TriStar Vineland Limited Corporation, TriStar Vineland General Corporation, TriStar Rumford Limited Corporation, TriStar Georgetown General Corporation, TriStar Georgetown Limited Corporation, TriStar Fuel Cells Corporation, TVC Nine Corporation, and TVC Ten Corporation, all of 20 Montchanin Road, Wilmington, Delaware 19807.

over a term not exceeding thirty years. All of the New Notes will be purchased by Columbia on or before December 31, 1996.

Cinergy Corporation (70–8477)

Cinergy Corporation (''Cinergy''), 139 East Fourth Street, Cincinnati, Ohio, 45202, a registered holding company, has filed a post-effective amendment to the declaration previously filed under sections 6(a), 7, and 12(b) of the Act and rules 45 and 54 thereunder.

By order dated November 18, 1994 (HCAR No. 26159) (''1994 Order''), Cinergy was authorized to issue and sell up to eight million shares of common stock, $.01 par value (''Shares''), from time to time through December 31, 1995. Cinergy proposed to sell the Shares (i) through solicitation of proposals from underwriters or dealers, (ii) through underwriters or dealers on a negotiated basis, (iii) directly to a limited number of purchasers or to a single purchaser, and/or (iv) through agents. Cinergy also proposed to contribute up to $160 million of the net proceeds to the equity capital of its Indiana utility subsidiary, PSI Energy, Inc. (''PSI'').

Cinergy proposed to have PSI use the funds for general corporate purposes, including the repayment of short-term indebtedness incurred for construction financing. Cinergy also proposed to use the balance of the net proceeds from the sale of the Shares for general corporate purposes, provided that it would not acquire interests in exempt wholesale generators (''EWGs'') or foreign utility companies (''FUCOs'') under sections 32 and 33 of the Act without separate authorization from the Commission.

On December 19, 1994, pursuant to an effective shelf registration statement for the sale of the Shares, Cinergy (i) publicly issued and sold 7,089,000 of the Shares at a price of $23.25 per share, less underwriting discounts and commissions of $0.68 per share, to underwriters, and (ii) pursuant to the terms of the underwriting agreement, received net proceeds of $159,998,730, all of which Cinergy contributed to the equity capital of PSI.

By order dated September 21, 1995 (HCAR No. 26376) (''1995 Order''), Cinergy was authorized to apply up to $115 million in proceeds from sales of the Shares to acquire interests in EWGs and FUCOs through May 31, 1998. As of October 1, 1995, an aggregate of 867,385 of the Shares remained available for issuance under the 1994 Order (''Remaining Shares'').

Cinergy now requests authorization to issue and/or sell the Remaining Shares from time to time through December 31, 1997 by any of the means detailed in the 1994 Order. Cinergy will apply the net proceeds from sales of the Remaining Shares to general corporate purposes, including repayment of short-term indebtedness, investments in subsidiaries, and acquisitions of interests in EWGs and FUCOs pursuant to the 1995 Order.

In addition, Cinergy may issue some or all of the Remaining Shares, on one or more occasions through December 31, 1997, to Cinergy system employees, including officer employees.

Eastern Edison Co., et al. (70–8713)

Eastern Edison Company (''Eastern''), 110 Mulberry Street, Brockton, Mass., 02403; Montaup Electric Company (''Montaup''), P.O. Box 2333, Boston, Mass., 02107; Blackstone Valley Electric Company (''Blackstone''), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island, 02865; EUA Service Corporation (''EUA Service''), P.O. Box 2333, Boston, Mass., 02107; Newport Electric Corporation (''Newport''), 12 Turner Road, P.O. 4128, Middletown, Rhode Island, 02840; and EUA Ocean State Corporation (''Ocean State''), P.O. Box 2333, Boston, Mass., 02107, all subsidiaries of Eastern Utilities Associates (''EUA''), a registered holding company, have filed a declaration under sections 6(a) and 7 of the Act.

Eastern, Montaup, Blackstone, EUA Service, Newport and Ocean State (''Applicants'') request authorization through December 31, 1997 to issue and sell short-term notes (''Notes'') to banks in aggregate amounts not to exceed $20 million for Eastern, $20 million for Montaup, $15 million for Blackstone, $5 million for EUA Service, $12 million for Newport and $5 million for Ocean State. The Notes will be issued to banks and might be renewed prior to December 31, 1997, provided no such notes will mature after September 30, 1998.

Notes will be issued to banks pursuant to informal credit line arrangements at a floating prime rate or at available fixed money market rates. Notes will mature within one year of issuance. Notes bearing interest at the floating prime rate will be subject to prepayment at any time without premium. Notes bearing interest at available money market rates, which in all cases will be less than the prime rate, will not be prepayable.

Credit lines with banks are subject in some cases to commitment fees. The existing bank credit lines expire on June 30, 1996 and their continued availability is subject to continuing review by the banks involved. Bank credit lines and arrangements may be increased or decreased or changed and additional lines may be obtained from other banks.

The existing credit line arrangements provide for borrowing at the prime rate or money market rates together with a commitment fee equal to 3/16 of 1% multiplied by the line of credit. Any such commitment fee will be allocated among the six applicants and other EUA system companies who have access to system lines of credit pursuant to applicable regulatory authority, in proportion to their respective borrowing authorizations.

The funds to be borrowed by Applicants from the issuance of the Notes will be applied, together with other funds available to these companies, to (i) renew outstanding notes payable to banks, (ii) finance their respective 1996 and 1997 cash construction expenditures, (iii) provide funds to meet certain sinking fund, and retirements or redemptions of outstanding securities, (iv) provide funds to meet working capital requirements, and, (v) for other corporate purposes.

The Notes issued to banks will be repaid through (i) the issuance of new notes, (ii) the internal generation of funds, and/or (iii) the issuance and sale of long-term debt and equity securities.

Gulf States Utilities Company (70–8721)

Gulf States Utilities Company (''GSU''), 350 Pine Street, Beaumont, Texas 77701, and elecrtric utility subsidiary of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 12(d) of the Act and rules 42, 44 and 54 thereunder.

GSU seeks authorization through December 31, 2000 to issue and sell (a) one or more new series of GSU's First Mortgage Bonds (''Bonds''), (b) one or more new sub-series of the Medium Term Note Series of its First Mortgage Bonds (''MTNs'') , and/or (c) one or more new series of debentures, (''Debentures''), in an aggregate principal amount of up to $900 million, excluding the Collateral Securities (defined below) and debentures issued by GSU to support the obligations of special purpose subsidiaries issuing preferred securities referred to below (''Entity Subordinated Debentures''). Each series of Bonds, sub-series of MTNs and/or series of Debentures (other than the Entity Subordinated Debentures) will be sold at such price, will bear interest at such rate or rates and will mature on such date (not more than 40 years from the first day of the month of issuance) and have such other

terms as will be determined at the time of sale.

GSU requests an exception from the Commission's Statement of Policy Regarding First Mortgage Bonds for any series of Bonds, sub-series of MTNs and/or Debentures with respect to the use of a sinking fund and a maintenance and operating fund, and with respect to redemption, dividend and other terms.

GSU further proposes to issue and sell, from time to time through December 31, 2000, (a) through special purpose subsidiaries (''Issuing Entities''), one or more new series of the preferred securities of a subsidiary of GSU (''Entity Interests''), (b) one or more new series of its preferred stock (''Preferred''), and (c) one or more new series of its preference stock (''Preference''), in a combined aggregate amount not to exceed $400 million.

Either GSU or special purpose subsidiaries will acquire all voting interests in the Issuing Entities, whose sole business will be to issue the Entity Interests. Proceeds from the sale by an Issuing Entity of Entity Interest, together with equity contributions made directly or indirectly by GSU to that Issuing Entity, will be used to purchase Entity Subordinated Debentures to be issued by GSU to that Issuing Entity.

Obligations of an Issuing Entity under Entity Interests it has issued will be supported by GSU's obligations under the Entity Subordinated Debentures issued to that Issuing Entity, and will mirror the terms of those Entity Subordinated Debentures. Each series of Entity Subordinated Debentures will not exceed in aggregate principal amount aggregate stated amount of the related Entity Interests and will mature not more than 50 years from its date of issuance. Additionally, GSU may guarantee obligations of each Issuing Entity under the Entity Interests if has issued.

Entity Subordinated Debentures will be expressly subordinated to certain senior indebtedness of GSU, and may also provide for the deferral of interest for specified periods. Accordingly, each Issuing Entity will have the right to defer distributions on its Entity Interests for a specified period, but only if and to the extent that GSU defers the interest payments on the Entity Subordinated Debentures pursuant to the subordination provisions of those Debentures.

Each share of Preferred may or may not have par value and may deviate from the Commission's Statement of Policy Regarding Preferred Stock (''Preferred Stock SOP'') with respect to redemption and other provisions. Each share of Preference will have no par value and may deviate from the Preferred Stock SOP with respect to redemption and other provisions.

GSU proposes to use the net proceeds derived from the issuance and sale of Bonds, the MTN's, the Debentures, the Entity Interests, the Preferred, and the Preference for general corporate purposes, including, but not limited to, the possible acquisition of certain outstanding securities.

GSU also proposes to enter into arrangements to finance on a tax-exempt basis certain pollution control facilities (''Facilities''). GSU proposes, from time to time through December 31, 2000, to enter into one or more leases, subleases, installment sale agreements, refunding agreements or other agreements and/or supplements and/or amendments thereto (each and all of the foregoing being referred to herein as the ''Agreement'') with one or more issuing governmental authorities (individually and collectively being referred to herein as the ''Authority''), pursuant to which the Authority may issue one or more series of tax-exempt revenue bonds (''Tax-Exempt Bonds'') in an aggregate principal amount not to exceed $250 million. Pursuant to the Agreement, GSU will be obligated to make payments sufficient to pay the principal or redemption price of, the premium, if any, and the interest on Tax-Exempt as the same become due and payable. Under the Agreement, GSU will also be obligated to pay certain fees incurred in the transactions.

Each series of the Tax-Exempt Bonds will mature no later than forty years from the date of issuance. Each Agreement and indenture (''Indenture'') under which the Tax-Exempt Bonds will be issued will provide for either a fixed interest rate or an adjustable interest rate for each series of Tax-Exempt Bonds. The Tax-Exempt Bonds may be subject to optional redemption by the issuing Authority, at the direction of the GSU, in whole or in part.

In order to obtain a more favorable rating and thereby improve the marketability of one or more series of the Tax-Exempt Bonds, GSU may: (a) Arrange for one or more letters of credit with one or more banks (collectively, ''Bank'') in favor of the trustees under the indentures for one or more such series (collectively, ''Trustee'), (b) provide an insurance policy for the payment of the principal, interest and/or premium in connection with one or more such series, or (c) issue and pledge one or more new series of its first mortgage bonds (''Collateral Securities'') to the Trustee and/or the Bank to evidence and secure GSU's obligations under the Agreement and/or the reimbursement agreements underlying the letters of credit, in a combined aggregate principal amount not to exceed $275 million.

GSU also proposes to acquire, through tender offers or otherwise, of up to $1.55 billion in aggregate principal amount of certain of its outstanding securities, including its outstanding first mortgage bonds, medium-term notes, preferred stock, preference stock, and/or pollution control or industrial revenue bonds issued for GSU's benefit, at any time, prior to December 31, 2000.

Fidelity Management & Research Company, et al. (70–8735)

Fidelity Management & Research Company (''FMR Co.''), an investment adviser registered under section 203 of the Investment Advisers Act of 1940, as amended, and Fidelity Management Trust Company (''FMTC''), a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, as amended, both located at 82 Devonshire Street F7D, Boston, Massachusetts 02109–3614, have filed an application for an order granting exemption under section 3(a)(4) from all provisions of the Act except section 9(a)(2). Alternatively, they request an order of exemption under section 3(a)(3).[3] (FMR Co. and FMTC are hereafter collectively referred to as ''Fidelity'' or the ''Applicant.'')

Fidelity is principally engaged in the business of investment management, with approximately $373.6 billion of assets under management as of August 31, 1995.[4] Neither the Applicant nor any of its affiliates is currently a ''public utility company'' or ''holding company'' under the Act.

As part of Fidelity's distressed investment business, various funds and accounts under Fidelity's management have purchased outstanding lease obligation bonds, secured leases obligation bonds and unsecured debt of El Paso Electric Company (''El Paso''), a public utility company which filed for

[3] FMR Co. and FMTC are each Massachusetts corporations and wholly-owned subsidiaries of a third Massachusetts corporation, FMR Corp. If an exemption is granted to the subsidiaries, the parent, FMR Corp., and its controlling shareholders, will claim exemption from regulation under the Act, pursuant to rule 10(a)(2).

[4] FMR Co. provides investment advisory services to investment companies registered under section 8 of the Investment Company Act of 1940, as amended, and serves as investment adviser to certain other funds which are generally offered to limited groups of investors. FMTC serves as trustee or investment manager for various private investment accounts, primarily employee benefit plans. Fidelity affiliates are also involved in various other lines of business including, but not limited to, venture capital asset management, securities brokerage, transfer and shareholder servicing, and real estate development.

relief under Chapter 11 of the United States Bankruptcy Code on January 8, 1992.[5] At present, approximately fifteen funds and accounts managed by Fidelity hold, in the aggregate, outstanding lease obligation bonds and secured lease obligation bonds of El Paso with face value of approximately $224 million and approximately $83 million of El Paso's unsecured debt. Fidelity states that these debt securities were acquired for investment purposes, continue to be held exclusively for such purposes and, at current market value, represent approximately six one hundredths of a percent (0.06%) of the assets under its management and have produced a comparable percentage of its income since their acquisition.

Applicant states that negotiations between El Paso and its creditors, including Fidelity, have produced a Fourth Amended Plan of Reorganization, dated October 27, 1995 (''Fourth Plan of Reorganization''),[6] pursuant to which, among other things, eighty-five percent (85%) of the common stock or reorganized El Paso would be distributed to these creditors in exchange for the debt they now hold of the existing El Paso. In the event of such a distribution, the various funds and accounts managed by Fidelity would receive, in the aggregate, up to thirty percent (30%) of the common stock of reorganized El Paso. Applicant states that Fidelity would hold these El Paso voting securities for investment purposes only and would reduce its aggregate interest to less than ten percent (10%) of the outstanding voting securities of reorganized El Paso as soon as it is financially reasonable to do so, consistent with its fiduciary obligations to its investors.

Applicant anticipates confirmation of the Fourth Plan of Reorganization on January 9, 1996, and states that it is a condition precedent to confirmation that Fidelity not be required to register as a holding company under the Act and reorganized El Paso not be deemed to be a subsidiary company of a registered holding company.

Applicant states that the voting securities of El Paso that would be distributed to Fidelity's various funds and accounts pursuant to the Fourth Plan of Reorganization would be held by approximately fifteen (15) separate entities, none of which would hold ten percent (10%) or more of such voting securities. It asserts that Fidelity would not be a holding company within the meaning of section 2(a)(7) of the Act unless such interests are aggregated and contends that fidelity will not exercise such a controlling influence over the management or policies of reorganized El Paso as to make it necessary or appropriate to aggregate and so subject Fidelity to regulation as a holding company.[7]

Positioning solely for purposes of this application that the voting interests should be aggregated so as to render Fidelity a holding company, Fidelity states that it would nonetheless be entitled to an exemption under section 3(a)(4) or section 3(a)(3) of the Act. Applicant asserts that it is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted. Fidelity requests an exemption under section 3(a)(4) for a period of up to three years from the date of acquisition of the El Paso voting securities to enable it to reduce its holdings in reorganized El Paso in an orderly fashion, consistent with market conditions and its fiduciary obligations to its investors.[8] Applicant also asserts that it is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company. Applicant further asserts that granting Fidelity an exemption under section 3(a)(4) or 3(a)(3) will not result in detriment to the public interest or the interest of investors or consumers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28793 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

[5] El Paso generates and distributes electricity in El Paso, Texas and in an area of the Rio Grande Valley in western Texas and southern New Mexico. It also sells electricity to wholesale customers in southern California, New Mexico, Texas, and Mexico. Its interconnected system serves approximately 271,000 customers and covers an estimated population of 818,000. El Paso had revenues of approximately $550 million in 1994.

[6] Previous efforts to structure three different plans of reorganization were unsuccessful.

[7] As a member of the Official Committee of Unsecured Creditors (the ''Creditors' Committee'') in the El Paso Chapter 11 proceeding, Fidelity has participated in the negotiation of the Fourth Plan of Reorganization. As one of three co-chairs of the Creditors' Committee, Fidelity serves on a five member committee that will nominate nine new members of the Board of Directors of reorganized El Paso, and recommend one of those new members for the position of Chief Executive Officer of the reorganized El Paso. The other four members will be existing members of the current Board. All of these selections will be subject to the approval of the Current Board of Directors of El Paso. The Creditors' Committee will be dissolved at the close of business on the effective date of the Fourth Plan of Reorganization. Thereafter, Fidelity will vote to protect its interests as a shareholder, but it will not be represented on the Board by any of its directors, officers, or other employees. As a large shareholder, Fidelity may be invited to attend meetings of reorganized El Paso's Board of Directors as an observer, on a non-voting basis.

[8] Fidelity states that, if despite its good faith efforts, it is unable to reduce its holdings in reorganized El Paso voting securities to an aggregate of less than ten percent (10%), in a manner that is consistent with its fiduciary obligations, it will seek an order extending the period of the exemption.

[Rel. No. IC–21501A; 812–9678]

Fortis Advantage Portfolios, Inc., et al.; Extension of Notice Period

November 21, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Application for exemption under the Investment Company Act of 1940 (the ''Act''); extension of notice period.

APPLICANTS: Fortis Advantage Portfolios, Inc., Fortis Equity Portfolios, Inc., Fortis Fiduciary Fund, Inc., Fortis Worldwide Portfolios, Inc., Fortis Growth Fund, Inc., Fortis Money Portfolios, Inc., Fortis Securities, Inc., Fortis Series Fund, Inc., Fortis Tax-Free Portfolios, Inc., Fortis Income Portfolios, Inc., Special Portfolios, Inc., and Lazard Frères & Co. LLC.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

On November 13, 1995, a notice was issued giving interested persons until December 8, 1995 to request a hearing on an application filed by applicants (Investment Company Act Release No. 21501). The notice was assigned a release number under the Act on November 13, 1995 but was not published in the Federal Register at that time. Since the notice is now being published, the period for interested persons to request a hearing on the matter is being extended to December 18, 1995.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28866 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21502A; International Series Release No. 885A; 812–8654]

Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al.; Extension of Notice Period

November 21, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Application for exemption under the Investment Company Act of 1940; extension of notice period.

APPLICANTS: Merrill Lynch, Pierce, Fenner, & Smith Incorporated, Smith Barney Inc., Prudential Securities Incorporated, Dean Witter Reynolds Inc., PaineWebber Incorporated, Corporate Income Fund, Equity Income Fund, the Fund of Stripped U.S. Treasury Securities, Government Securities Income Fund, International Bond Fund, The Merrill Lynch Fund of Stripped U.S. Treasury Securities, The Mortgage-Backed Income Fund, Defined Asset Funds, Municipal Investment Trust Fund, and The Tax-Exempt Mortgage Fund.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

On November 13, 1995, a notice was issued giving interested persons until December 8, 1995 to request a hearing on an application filed by applicants (Investment Company Act Release No. 21502; International Series Release No. 885). The notice was assigned release numbers on November 13, 1995 but was not published in the Federal Register at that time. Since the notice is now being published, the period for interested persons to request a hearing on the matter is being extended to December 18, 1995.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28867 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Ocelot Energy Inc., Class B Subordinate Voting Shares, No Par Value) File No. 1–12076; Extension of Comment Period

November 20, 1995.

Due to a delay in the publication of the Federal Register, the Commission is extending the comment period concerning Ocelot Energy Inc.'s application to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. Any interested person may, on or before December 12, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange 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. 95–28869 Filed 11–27–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36492; File No. SR–MSRB–95–13]

Self-Regulatory Organizations; Notice of Amendment to Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fee Assessments and Reporting of Sales or Purchases, Pursuant to Rules A–13, A–14, and G–14

November 20, 1995.

Pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(2), notice is hereby given that on November 13, 1995, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') Amendment No. 1 to a proposed rule change (File No. SR–MSRB–95–13). Notice of the filing had previously been provided in Securities Exchange Act Release No. 36150 (Aug. 23, 1995), 60 FR 45197 (Aug. 30, 1995). The Commission received 13 comment letters in response to publication of the original notice. The comments are discussed subsequently in this document. The amendment to the proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the amendment from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing an amendment to its proposed rule change SR–MSRB–95–13, relating to certain changes in the fees assessed to brokers, dealers and municipal securities dealers (''dealers''). The proposed rule change, as amended, comprises an amendment to rule A–13 on Underwriting Assessments, a corollary amendment to rule G–14 on Reports of Sales and Purchases, and an amendment to rule A–14 on the Annual Fee. The Board requests that the amendment to rule A–14 be effective for the Board's fiscal year 1996 (October 1, 1995–September 30, 1996, referred to herein as ''FY96''). Since $100 already has been collected from each dealer for FY96, upon approval of the proposed rule change, the Board would bill each dealer an additional $100 for FY96.

Because of the Board's immediate need for the additional revenue that would be raised by the proposed fee on transactions included in the amendment to rule A–13, the Board requests that the A–13 amendment and the corollary amendment to rule G–14 become effective on January 1, 1996. The Board requests that the Commission approve the proposed rule change prior to that date, so that needed revenues can be collected in a timely manner.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

The initial filing of the proposed rule change on August 11, 1995 (File No. SR–MSRB–95–13 as filed, referred to herein as the ''August 1995 filing'') proposed three changes in the fees assessed by the Board on dealers: (i) The annual fee of $100 assessed under rule A–14 would be raised to $200; (ii) the underwriting assessment of $.03 per $1,000 par value, assessed on primary offerings of most long-term municipal

securities under rule A–13, would be decreased to $0.2 per $1,000 par value; and (iii) rule A–13 would include a new transaction fee of $.01 per $1,000 par value of inter-dealer sales transactions.

As amended, the proposed rule change would result in the following fees: (i) The annual fee would be increased to $200, as proposed in the August 1995 filing; (ii) the underwriting assessment of $.03 per $1,000 par value would remain at its current level of $.03 and thus would no longer be included as part of the proposed rule change; and (iii) the proposed transaction fee would be assessed at $.005 per $1,000 par value—one half the rate originally proposed.

In the August 1995 filing, the Board discussed the reasons for the proposed rule change, the Board's philosophy that fees should be assessed upon dealers based upon the level of the dealers' participation in the market, and the Board's need for additional revenues. These stated purposes of the proposed rule change also apply to the proposed rule change, as amended.

Because the proposed transaction fee has been halved by the amendment, the estimated revenue from the proposed transaction fee also is halved, from approximately $4 million per year to approximately $2 million per year. However, the underwriting fee will remain at $.03 per $1,000 par value of primary offerings, so that revenues from this source are projected to be approximately $3.9 million. This approximately $1.3 million more than was projected under the August 1995 filing, which contemplated an underwriting fee of $.02 per $1,000. The proposed rule change, as amended, will provide the Board with approximately $700,000 per year less in revenue than the proposed rule change as initially filed. In addition, the Board is requesting a January 1, 1996 effective date for the transaction fee, which means that the first three months of FY96 will pass without any revenue from the proposed transaction fee.

The Board believes that the reduced revenues from the proposed rule change, as amended, will be sufficient to meet the Board's requirements because, among other reasons, the Board now anticipates that a lower level of expenditure will be required for the Board's transaction reporting program during FY96. The lower level of expenditures is now expected because the Board recently decided to combine Phase II of the program (the reporting of institutional customer transactions for transparency and audit trail purposes) and Phase III of the program (reporting of retail transactions) into one phase. This combined ''customer transaction reporting phase'' is expected to become operational in January 1998. Previously, Phase II was scheduled to become operational during FY96, which would have required greater FY96 expenditures on the program than are now required.[1]

The Board noted in the August 1995 filing that, although inter-dealer transaction volume is an acceptable measure of dealer participation in the market for purposes of fee assessment, the Board intends, in future years, to review the possible use of customer transaction data, provided by the Board's transaction reporting program, as an additional way to measure dealer participation in the market. The Board continues to view customer transaction volume as an appropriate measure of dealer participation in the market and will review the use of customer transaction information for fee assessment purposes once it becomes available. Due to revisions in the schedule for the customer transaction phase, it will not be possible to use customer transactions as a basis for fee assessment until sometime in the second half of the Board's 1998 fiscal year. This date is somewhat later than the Board anticipated when the August 1995 filing was made.

The Board understands that the proposed transaction fee would have a substantial impact on participants whose transaction activity is primarily or exclusively in the interdealer market. In recognition of this fact, the Board concluded to leave the $.03 per $1,000 underwriting assessment in rule A–13 at its current level and to reduce the proposed transaction fee by 50 percent to $.005 per $1,000 par value in the proposed rule change, as amended.

In its August 1995 filing of the proposed rule change the Board noted that it was proposed pursuant to the Section 15B(b)(2)(J) of the Act, which requires, in pertinent part, that the Board's rules shall:

> provide that each municipal securities broker and municipal securities dealer shall pay to the board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

The same statutory basis applies to the proposed rule change, as amended. It would provide reasonable fees, based upon dealer involvement in the municipal securities market, that are necessary to defray Board expenses.

B. Self-Regulatory Organization's Statement on Burden on Competition

In the August 1995 filing, the Board discussed why it believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The board believes that the same rationale applies to the proposed rule change, as amended.

In the August 1995 filing, the Board noted that, for dealers that previously have not engaged in underwriting activities, the proposed transaction fee may constitute a substantial net increase in fees paid to the Board. The Board noted at that time its belief that the proposed transaction fee, at a level of $.01 per $1,000 par value, did not represent an undue burden on those dealers since the fee would directly reflect the dealers' participation in the inter-dealer market. At the revised level of $.005 per $1,000 par value, the proposed transaction fee would require these dealers to pay only half the amount of fees to the Board that was originally proposed and so any burden on these dealers would be commensurately reduced. The Board, therefore, believes that the proposed rule change, as amended, does not place any undue burden on dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board did not request comment on the August 1995 filing or on the proposed rule change, as amended. The board understands, however, that the Commission received 13 comment letters on the August 1995 filing, from the following:

Barr Brothers & Co. Inc. (''Barr Brothers'')
Cantor Fitzgerald Partners (''Cantor Fitzgerald'')
Chapdelaine & Co. (''Chapdelaine'')
R.W. Ellwood & Co. (''Ellwood'')
EMR Securities Inc. (''EMR'')
J.F. Hartfield & Co., Inc. (''Hartfield'')
J.J. Kenny Drake Co., Inc. (''Kenny'')
Municipal Partners Inc. (''MPI'')
The Public Securities Association (the ''PSA'')
R.W. Smith & Associates, Inc (''R.W. Smith'')
Smith Peters & Stark (''Smith Peters'')
Sonoma Securities Corporation (''Sonoma'') (sent via the Board)
Tullett and Tokyo Securities, Inc. (''Tullett'')

In addition to these comment letters regarding the August 1995 filing, the Board also has received two letters

[1] A description of the revised plan for the transaction reporting system is included in SR–MSRB–95–17, filed with the Commission on November 13, 1995.

proposing alternative fee structures.[2] The comments received by the Commission on the August 1995 filing and the two alternative proposals are discussed below.

Broker's Brokers

All commentators on the August 1995 filing except three[3] identified themselves as municipal securities broker's brokers (''broker's brokers''). All broker's brokers commenting on the August 1995 filing specifically criticized the transaction fee and opposed its application to broker's brokers, as did one other commentator.[4]

A broker's broker is a dealer that deals exclusively with other dealers and not with public investors or issuers. Broker's brokers are heavily involved in the inter-dealer market for municipal securities, working with other dealers who wish to buy or sell specific municipal securities issues. A broker's broker avoids taking inventory positions in municipal securities and does not execute an order for a purchase or sale unless an offsetting order or orders can be executed at the same time. Broker's brokers are subject to Board rules, as are all other dealers, based upon the municipal securities activities which they undertake.

The exact number of broker's brokers operating in the municipal securities market is unknown. The commentators give estimates ranging from 15[5] to 21.[6] The Board has identified 19 dealers who are known to have advertised themselves as broker's brokers.[7]

Broker's brokers execute offsetting purchase and sale transactions and would be assessed transaction fees based upon their sale transactions.

Some commentators suggest that the proposed rule change results in an inappropriate double assessment of transactions because it assesses the sale transactions of broker's brokers and also assesses the transactions of those dealers that sell securities through the use of broker's brokers.[8] These commentators state that a sale transaction executed by a broker's broker should not be viewed as a separate transaction, but rather as part of one trade between two other dealers, with the broker's broker ''in the middle.''

Transactions executed by a broker's broker may be executed either at the direction of a dealer that wishes to sell a quantity of securities or a dealer that wishes to purchase a quantity of securities. Broker's brokers work at the direction of the selling dealer most of the time. In such cases, the selling dealer agrees that the broker's broker will buy a quantity of securities from the selling dealer at a specific price and simultaneously sell the securities to one or more purchasing dealers at a price (or prices) that allow the broker's broker to make an agreed-upon sum on the transaction(s). The offsetting purchase and sale transactions by broker's brokers are confirmed and submitted for clearing as separate purchase and sale transactions. The difference between the purchase and sale prices represents the compensation to the broker's broker.[9] When the broker's broker works for the purchasing dealer, the situation generally is the same except that the agreement on prices and compensation is reached with the purchasing dealer. In all cases, the broker's broker maintains strict anonymity between the selling and purchasing dealers. Even the dealer directing the broker's broker to execute a transaction cannot learn the identity of the broker's broker's contra-party.

Accordingly, even though the transactions of broker's brokers are executed at the direction of other dealers, the transactions reasonably can be viewed as separate, offsetting purchase and sale transactions. For purposes of the proposed transaction fee, the Board believes that this is the correct analysis. A broker's broker with a high transaction volume should be assessed proportionately more in transaction fees than a broker's broker with a low transaction volume. Were the transactions of broker's brokers found not to be separate transactions, broker's brokers would not be subject to the proposed transaction fee at all.

The total transaction fees levied against all broker's brokers would be exactly proportionate to the total inter-dealer transaction volume of all broker's brokers.

A number of commentators stated opposition to the proposed transaction fee because the total fees that would be generated by broker's brokers transactions would be disproportionate to the percentage of broker's brokers in the overall dealer population.[10] The Board estimates that approximately 35% of the par value of inter-dealer transactions reported to it under rule G–14 have a broker's broker on the sale side of the transaction and therefore 35% of the transaction fee would be derived from broker's brokers. That this percentage would be disproportionate to the percentage of dealers who are broker's brokers is not surprising since broker's brokers execute comparatively high numbers of inter-dealer municipal securities transactions, *i.e.*, they participate very heavily in this portion of the market. In contract, broker's brokers do no underwriting and consequently would pay zero percent of the underwriting assessment.

Under the proposed rule change, as amended, broker's brokers would contribute less than 11 percent of Board revenues.[11] This latter percentage shows the effect of blending the heavy participation of broker's brokers in the inter-dealer market, the nil participation in the underwriting market and the payment of $200 per broker in annual fees. As discussed more fully below, given the available options for allocating fees among dealers based upon their participation in the market, the Board does not believe this result to be unreasonable.

The proposed rule change is not tied to the profitability of specific categories of dealers,

[2] These are a September 19, 1995 letter from Kenny (''Kenny II'') and a November 1, 1995 letter from the PSA (''PSA II'').

[3] The exceptions are Barr Brothers, the PSA and Sonoma.

[4] The PSA was the non-broker's broker that opposed the transaction fee and its application to broker's brokers. In addition, Barr Brothers commented to suggest a revenue-based fee system and Sonoma opposed the increase in the annual fee. These issues are discussed below.

[5] EMR.

[6] Hartfield.

[7] They are Associated Bond Brokers, Butler Larsen Pierce & Co., Cantor Fitzgerald, Chapdelaine, Cowen & Co., EMR, Ellwood, Hammond & Botzum, Hartfield, Kenny, O'Brien & Shepard, MPI, Murphy & Durieu, Schmidt Securities, R.W. Smith, Smith Peters, Titus & Donnelly, Tullett, and Wolfe & Hurst Bond Brokers.

[8] Cantor, Chapdelaine, Kenny and PSA.

[9] For example, the broker's broker might confirm to the selling dealer at a dollar price of $99.90 and confirm to the purchasing dealer at a price of par. The difference between the two prices is the compensation to the broker's broker. In some cases, the broker's broker purchases one block of securities from the selling dealer and sells the securities to two or more other dealers, in smaller blocks, at different prices. In these cases, the transaction with the selling dealer is confirmed and cleared as one transaction at a specific price, while the offsetting sale transactions are confirmed separately at the prices agreed upon.

[10] Cantor, Chapdelaine, Ellwood, EMR, Hartfield, Kenny, PSA, and Tullett. One commentator, for example, notes that ''[i]t is . . . inequitable for twenty brokers' brokers who compose less than 1% of the over 2700 broker-dealers registered with the MSRB to pay twenty-five to thirty-three percent of the new transaction fee'' (PSA).

[11] The 11 percentage figure is based upon the following assumptions: $400 billion in interdealer sales transactions during the year, generating $2 million in transaction fees for the year; the transaction fee effective for the entire year; broker's brokers paying an estimated 35 percent of transaction fees; $130 billion in new issuance, generating $3.9 million in underwriting fees; and 2,700 dealers generating $540,000 in annual fees. In FY96, the transaction fee would be in effect only for the last nine months, reducing the total amount of revenue to the Board and the portion of revenue obtained through the transaction fee. Accordingly, in FY96, the percentage of fees paid by broker's brokers is estimated to be less than 9 percent of total Board revenues.

but rather applies in an identical manner to all inter-dealer transactions.

Several commentators opposing the proposed rule change noted that broker's brokers' profit margins on inter-dealer transactions are smaller than those of other dealers and that broker's brokers generally do not provide municipal securities services other than the execution of inter-dealer transactions.[12] These commentators accordingly believe that the proposed transaction fee would reduce the profits of broker's brokers more than those of other dealers. Some commentators further suggested that, as a result, the proposed transaction fee would cause some broker's brokers to exit the business, reducing liquidity in the municipal securities market.[13]

Although the proposed transaction fee would represent a new cost of doing business for broker's brokers, the Board does not believe that, at a rate of $.005 per $1,000 par value, it would be a major factor in the ongoing viability of broker's brokers. The transaction fee would be imposed on all dealers at the same rate. It would apply to all broker's brokers in exactly the same way and thus would have no impact on broker's brokers competing with each other. Moreover, given that certain broker's brokers state that they will be unable to pass the transaction fee on to purchasing or selling dealers,[14] the Board does not believe the proposed fee would provide any disincentive to the use of broker's brokers.

As a matter of policy, the Board does not believe that it would be advisable to exempt or to set lower rates for transactions executed by a specific category of dealers such as broker's brokers. The Board nevertheless is sensitive to the profitability concerns of broker's brokers and acknowledges that, on average, the profits earned by borker's brokers in proportion to their inter-dealer transactions may be lower than for other dealers. Broker's brokers execute all of their transactions on a ''riskless'' basis, *i.e.*, they only execute orders when there already exists an offsetting order. The compensation to dealers for executing such ''riskless'' transactions normally is lower than the compensation received for transactions sold from inventory, where market risk has been undertaken. Any dealer may execute riskless transactions. The Board did not and could not propose a lower transaction fee for ''riskless'' transactions because there is no mechanism for reliably identifying an inter-dealer transaction as ''riskless.'' It should be noted, however, that if such a mechanism were to become available, and a lower fee were established for ''riskless'' transactions, it would be necessary to raise Board fees in other areas to compensate for the reduction in revenue.

Need for Additional Revenue

Some commentators suggested that the Board does not need the additional revenue that would be raised by the proposed rule change,[15] that the Board should consider scaling back operations and expenses in a period of industry contraction,[16] or that the Board has not considered how changes in underwriting volume or other factors may affect Board revenues in the future.[17]

The Board has budgeted approximately $7.5 million in operating expenditures and $200,000 in capital expenditures in FY96 and expects its FY97 operating budget to be approximately $8.4 to $8.7 million, with capital expenditures of about $1 million. While these projections do represent substantial increases over actual operating expenditures in FY95 (which were approximately $6.6 million, unaudited), the Board does not agree with the commentators' suggestion that the Board should scale back its regulatory functions and projects during cyclical periods of market contraction. In fact, there may be a need for increased regulatory vigilance during these periods. In addition, many ongoing Board projects affecting the budget—such as completion of the Board's Transaction Reporting System, the continued operation of the Official Statement/Advance Refunding System, and the planned Job Delineation Survey for professional qualification examinations—are long-range projects which are critical to regulation of the market and are not logically related to cyclical market activity.

The Board's policy is to maintain cash and liquid assets equal to six months' to one year's operating expense. This reserve amount at the end of the Board's 1995 fiscal year (September 30, 1995) was approximately $6.3 million (unaudited). Without the proposed rule change, the Board would start FY97 below the minimum level of reserves required by Board policy and would be expected to exhaust almost all reserves by the end of FY97. With the proposed rule change, cash and liquid assets at the end of FY96 are projected to be within the range established by the Board's policy. The Board reviews projected new-issue volume regularly, along with other budgetary matters, and in doing so, reviews and sets fee levels to meet the Board's policy. Under the proposed rule change, the Board would regularly review transaction volume as well.

Proposed Alternative Fee Structures

A number of commentators suggested that Board fees should be imposed based upon the revenues earned by dealers, rather than transaction volume.[18] There also have been suggestions that the Board raise its annual fee or impose flat fees for dealer categories to obtain needed revenue.[19] The Board has considered these and a number of other suggestions, but continues to believe that the combination of annual fees, underwriting assessments and transaction fees included in the proposed rule change represents the best available, auditable, fee structure.

There is no source of ''municipal securities revenue'' that could be used to produce an auditable fee structure for the Board.

The Board has considered carefully whether Board fees should be linked in some way to the ''municipal securities revenues'' of dealers. Based on the advice of its outside auditors, the Board has concluded that it could not adopt a fee based on the ''municipal securities revenue'' unless this term is clearly defined and uniformly and computed by dealers *and* unless such computations are independently audited prior to being reported to the Board. Without these requirements being met, the Board would be in danger of having its own audited financial statements qualified if it were to assess fees linked to ''municipal securities revenue.''

The Board has been unable to locate any source of audited information that

[12] Cantor, Kenny, MPI, and R.W. Smith.

[13] Kenny and PSA.

[14] Chapdelaine and Kenny.

[15] Hartfield. In addition, one commentator suggested that the Board would raise more from the transaction fee than the Board has projected. The Board has estimated $400 billion in annual transaction volume based upon nine months of actual sell-side trade data submitted to the Board under rule G–14, from January 1995 through September 1995. This commentator estimates the annual level at closer to $700 billion, based in part upon reports of $48 billion in ''compared municipal transactions'' for July 1995. This July figure apparently was provided to the commentator by National Securities Clearing Corporation. Since the July figure given is approximately double the sales transactions tracked by the Board for July, it appears that the numbers being used by the commentator represent the par value of each buy-side and sell-side added together. The fee under the proposed rule change, however, would be assessed for only the sell-side of transactions. (The commentator was Kenny.)

[16] Kenny.

[17] R.W. Smith.

[18] Barr Brothers, Cantor Fitzgerald, Hartfield, MPI, and the PSA.

[19] *E.g.*, PSA and PSA II.

uniformly calculates and identifies ''municipal securities revenue'' earned by securities firms and dealer banks. Even if he Board were, by rule, to define ''municipal securities revenue,'' establish accounting rules for its computation, and require each dealer to use these rules to perform these calculations, it also would be necessary for each dealer to obtain an independent audit of the calculation before the figures could be used to generate fee assessments. The Board believes that the high cost to the dealer community of achieving compliance with these requirements would make this method of fee assessment impractical.

Increasing annual fees above the proposed $200 level, or the creation of ''dealer categories'' with relatively large assessments for low-volume dealers, would create barriers to participation in the municipal securities market by low-volume dealers.

The Board also has considered the suggestion of a commentator[20] that the annual fee could be increased to $1,000. The Board currently receives annual fees from approximately 2,700 dealers. The commentator therefore estimates that a $1,000 fee would raise $2.7 million and could be implemented in lieu of the proposed transaction fee.

Of the approximately 2,700 dealers currently paying the Board annual fees, only approximately 850 have reported any inter-dealer transactions to the Board since January 1995.[21] Given that the remaining dealers have not reported any inter-dealer transactions, the Board believes that the remaining entities either: (1) Are merely executing occasional municipal securities transactions as an accommodation to customers requesting them to do so; or (ii) are not active at all in the inter-dealer market, but wish to remain capable of executing municipal securities transactions in the future. Raising the annual fee to $1,000 likely would result in the list of dealers eligible to execute transactions in municipal securities dropping in size from 2,700 to substantially under 1,000. This would decrease the revenue expectations for a $1,000 annual fee to $1 million—only $460,000 more than is expected from the proposed $200 annual fee.

In amending the proposed rule change, the Board carefully considered whether it should increase the $100 annual fee at all, since a larger annual fee might constitute a barrier to low-volume dealers participating in the market. In fact, a low-volume dealer has commented in opposition to the proposed $100 increase in annual fee.[22] The Board has concluded that the proposed $200 annual fee is not a significant barrier for dealer participation in the market; however, the Board is concerned that a much more substantial barrier would be created by a $1,000 fee and accordingly believes that a $200 annual fee should be the maximum at this time.

The Board also has considered suggestions that categories of dealers be created based upon market indicators such as underwriting volume and transaction volume, and that all dealers in a specific category be annually assessed the same flat fee (''flat fee proposals'').[23] The flat fee proposals reviewed by the Board are similar to the proposals to raise annual fees to $1,000 in that each depends heavily upon obtaining a higher percentage of board revenue from dealers having a relatively low percentage of market activity. As noted above, however, dramatically raising fees for dealers with little or no market activity is unlikely to have the desired revenue effect because lower-volume dealers simply will drop out of the market when faced with high annual fees. In addition, the Board is concerned that relatively high annual fees for low-volume dealers may constitute an inappropriate barrier to participation in the market by these dealers.

In effect, the proposed rule change does ''categorize'' dealers based on their market activity by assessing separate fees based on underwriting activity and transaction volume, and assessing a flat $200 annual fee for all dealers. Each dealer pays a particular fee amount based on its own underwriting and transaction volume. The Board does not believe that it would be appropriate to re-adjust the allocation of fees by creating other categories, merely to shift fee burdens to lower volume dealers.

Using Dealer Participation in the Market for Measuring Fee Assessment

In proposing alternative fee structures, several commentators criticized the general concept of levying fees based heavily upon measures of dealer participation in the municipal securities market such as underwriting volume and transaction activity. In addition to the suggestions that much higher annual fees be assessed, or that ''municipal securities revenues'' be used for fee assessment, another criticism was made that assessing dealers based on their transaction activity does not fit within ''value-added tax methodologies'' that look to the value added to a product to determine a tax to be paid, rather than the activity of market participants.[24]

The Board has carefully considered suggestions for a totally different approach in its fee assessment structure, but has concluded that assessments based upon objective measures of participation in the market still represent the best method for funding Board operations. After closely examining the various alternative measures of dealer participation in the market—including the suggestions for using ''municipal securities revenue''—the Board has concluded that underwriting activity and inter-dealer transaction volume are the best available and auditable means upon which to base fees. These measures of dealer activity are admittedly imperfect because they do not track every important activity in the market, *e.g.*, customer transactions. There is, however, currently no available source of customer transaction data. The Board is working on expanding the transaction reporting system to obtain customer transaction data and this component of the program is now expected to be in place in early 1998. The Board will review the use of customer transaction activity as a means of assessing fees when additional reliable information becomes available. The Board believes that, until that time, the proposed rule change presents a reasonable, practical and fair fee structure for funding Board operations.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Board is requesting the Commission to make the proposed change to rule A–14 on the Annual Fee

[20] PSA II.

[21] This figure, which is obtained from the Board's Transaction Reporting System, is approximate because reporting of executing dealer identities (as contrasted with clearing dealer identities) became mandatory only in July 1995. The figure nevertheless fits well with other estimates of the number dealers that execute inter-dealer transactions.

[22] Sonoma.

[23] Kenny II and PSA II.

[24] R.W. Smith.

effective for Board fiscal year 1996, *i.e.*, that it become effective as of October 1, 1995, for reasons discussed above. The Board is requesting that the proposed change to rule A–13 on fee assessments, and the corollary change to rule G–14 on reports of sales and purchases, be made effective on January 1, 1996, also for reasons discussed above.

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 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 Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–13 and should be submitted by December 18, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28868 Filed 11–24–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Minneapolis/St. Paul Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Minneapolis/St. Paul District Advisory Council will hold a public meeting on Friday, December 8, 1995 at 11:30 am at the Decathlon Club, 1700 East 79th Street, Bloomington, Minnesota, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403 (612) 370–2306.

Dated: November 20, 1995.

Art DeCoursey,

Director, Office of Advisory Council.

[FR Doc. 95–28870 Filed 11–24–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Bureau of Intelligence and Research

[Public Notice No. 2287]

Discretionary Grant Programs: Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1996 Applications

AGENCY: The Department of State invites applications from national organizations with interest and expertise in conducting research and training to serve as intermediaries administering national competitive programs concerning the countries of Eastern Europe and the independent states of the former Soviet Union. The grants will be awarded through an open, national competition among applicant organizations.

Authority for this Program for Research and Training on Eastern Europe and the Independent States of the Former Soviet Union is contained in the Soviet-Eastern European Research and Training Act of 1983 (22 U.S.C. 4501–4508, as amended).

SUMMARY: The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1996 under a program administered by the Department of State.

ORGANIZATION OF NOTICE: This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program Part III provides the fiscal data for the program.

Part I

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand-delivered by January 19, 1996.

Applications Delivered by Mail

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520–6510.

An applicant must show proof of mailing consisting of *one* of the following:

(1) a legibly dated U.S. Postal Service postmark.

(2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) a dated shipping label, invoice, or receipt from a commercial center.

(4) any other proof of mailing acceptable to the Department of State.

If any application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

Applications Delivered by Hand

An application that is hand delivered must be taken to Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, 2201 C Street, N.W., Washington, D.C. Please phone first (202) 736–4572) to ensure access to the building.

The Advisory Committee staff will accept hand-delivered applications between 9:00 a.m. and 4:00 p.m. EST daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:00 p.m. on the closing date.

Part II

Program Information

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is ''of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs.'' Congress also declared that the development and maintenance of such knowledge and expertise'' depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government.'' The program provides financial support for

advanced research, training and other related functions on the countries of the region. By strengthening and sustaining in the United States a cadre of experts on Eastern Europe and the independent states of the former Soviet Union, the program contributes to the overall objectives of the FREEDOM Support and SEED programs.

The full purpose of the Act and the eligibility requirements are set forth in Pub. L. 98–164, 97 Stat. 1047–50, as amended. The countries include Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Kazakstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Slovakia, Tajikistan, Turkmenistan, Urkraine, Uzbekistan, Bosnia and Herzegovina, Slovenia, Croatia, Serbia, Montenegro, and the Former Yugoslav Republic of Macedonia. (No funds may actually be spent in Serbia.)

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from U.S. organizations prepared to conduct competitive programs on the independent states of the former Soviet Union and the countries of Eastern Europe and related fields. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Individual end-users of these funds—those to whom the applicant organizations or institutions propose to make awards—must be at the graduate or post-doctoral levels, and must have demonstrated a likely career commitment to the study of Eastern Europe and/or the independent states of the former Soviet Union.

Applications sought in this competition among organizations or institutions are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the countries of Eastern Europe and/or the independent states of the former Soviet Union by proposing:

(1) *National programs* which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of post-doctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) National programs which offer graduate, post-doctoral and teaching fellowships for advanced training on the countries of Eastern Europe and the independent states of the former Soviet Union, and in related studies, including training in the languages of the region, with such training to be conducted on a shared-cost basis, at American institutions of higher education;

(3) National programs which provide fellowships and other support for American specialists enabling them to conduct advanced research on the countries of Eastern Europe and the independent states of the former Soviet Union, and in related studies; and those which facilitate research collaboration between Government and private specialists in these areas;

(4) National programs which provide advanced training and research on a reciprocal basis in the countries of Eastern Europe and the independent states of the former Soviet Union by facilitating access for American specialists to research facilities and resources in those countries;

(5) National programs which facilitate the public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the countries of Eastern Europe and the independent states of the former Soviet Union in ways not specified above.

Note: The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies:

—*Publications.* Funds awarded in this competition should not be used to subsidize journals, newsletters and other periodical publications except in special circumstances, in which cases the funds should be supplied through peer-review organizations with national competitive programs.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, requests for conference funding should be directed to one or more of the national peer-review organizations receiving program funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

—*Library Activities.* Funds may be used for certain library activities which clearly strengthen research and training on the countries of Eastern Europe and the independent states of the former Soviet Union and benefit the fields as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Funds may not be used for activities such as modernization, acquisition, or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered.

—*Language Support.* The Advisory Committee encourages attention to the non-Russian languages of the independent states of the former Soviet Union and the less commonly taught languages of the East European countries. Support provided for Russian Language instruction/study normally will be only for advanced level. Applicants proposing to offer language instruction are encouraged to apply to a national program as described above which has appropriate peer group review mechanisms.

—*Support for Non-Americans.* The purpose of the program is to build and sustain U.S. expertise on the countries of Eastern Europe and the independent states of the former Soviet Union. Therefore, the Advisory Committee has determined that highest priority for support always should go to American specialists (i.e., U.S. citizens or permanent residents). Support for such activities as long-term research fellowships, i.e., nine months or longer, should be restricted solely to American scholars. Support for short-term activities also should be restricted to Americans, except in special instances where the participation of a non-American scholar has clear and demonstrable benefits to the American scholarly community. In such special instances, the applicant must justify the expenditure.

—*Support for Transitions.* The Advisory Committee encourages support for activities which, while building expertise among U.S. specialists on the region, *also* may promote fundamental goals of U.S. assistance programs such as helping establish market economies and promoting democratic governance and civil societies.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability on the countries of Eastern Europe and the independent states of the former Soviet Union. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which will ensure attention to all the countries of the area. Legislation requires and this announcement indicates under *Program Information* of this section that in certain cases grantee organizations must include shared-cost provisions in their arrangements with end-users. Cost-sharing is encouraged, whenever feasible, in all programs.

Part III

Available Funds

Awards are contingent upon the availability of funds. Funding may be available at a level up to $7.5 million. The precise level of funding will not be known until legislative action is complete. In Fiscal Year 1995, the Congress appropriated to the program $7.5 million from the Agency for International Development budget.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years. Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Grant agreements may permit the expenditure from a particular year's grant to be made up to three years from the grant's effective date, depending upon the source of the appropriation.

Applications

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one-page executive summary, a budget, and vitae of key professional staff. Proposers may append other information they consider essential, although bulky submissions are discouraged and run the risk of not being reviewed fully. The one-page summary and budget should precede the narrative in the proposal.

Proposed programs should be described fully, including benefits for the fields. All applicants should provide detailed information about their plans for peer evaluation and review procedures and estimates of the types and amount of anticipated awards.

Applicants who have received a grant from this program in the previous competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant received support prior to the last competition, a summary of those awards also should be included.

Descriptions of all competitive award programs should specify both past and anticipated applicant-to-award ratios.

Proposals from national organizations involving language instruction programs should provide for those programs supported in the past year information on the criteria for evaluation, including levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices must be included in the application.

Applications should include certifications of compliance with the provisions of:

(1) the Drug-Free Workplace Act (Pub. L. 100–690), in accordance with Appendix C of 22 CFR 137, Subpart F; and

(2) Section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with Appendix A of 22 CFR 138, New Restrictions on Lobbying Activities.

Budget

Since funds provided by AID would come separately from its East Europe (including the Baltic states) and New Independent States programs, proposals must indicate how the requested funds will be distributed by region, country (to the extent possible), and activity. Subsequently, grant recipients must report expenditures by region, country, and activity.

Applicants should familiarize themselves with Department of State grant regulations contained in 22 CFR 145, ''Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' OMB Circular A–110, ''Grants and Agreements with Institutions of Higher Education . . . Uniform Administrative Requirements,'' and OMB Circular A–133, ''Audits of Institutions of Higher Learning and Other Non-Profit Institutions'' and indicate or provide the following information:

(1) whether the organization falls under OMB Circular No. A–21, ''Cost Principles for Educational Institutions,'' or OMB Circular No. A–122, ''Cost Principles for Nonprofit Organizations;''

(2) a detailed program budget indicating direct expenses by program element, by region (the independent states of the former Soviet Union or Eastern Europe), indirect costs, and the total amount requested. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants requesting funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested grant funds. Other funding sources and amounts, when known, should be identified.

(3) the applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) the organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address, and point of contact of the audit agency.

All payments will be made to grant recipients through the Department of State.

Technical Review

The Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union will evaluate applications on the basis of the following criteria:

(1) responsiveness to the substantive provisions set forth above in *Part II, Program Information* (45 points);

(2) the professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes on the countries of Eastern Europe and the independent states of the former Soviet Union (35 points); and

(3) budget presentation of cost effectiveness (20 points).

Further Information

For further information, contact Kenneth E. Roberts, Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union, INR/RES, Room 6841, U.S. Department of State, 2201 C Street, N.W., Washington, D.C. 20520. Telephone: (202) 736–4573 or 736–4386, fax: (202) 736–4851.

Dated: November 8, 1995.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Studies of Eastern Europe and the Independent States of the Former Soviet Union.

[FR Doc. 95–28775 Filed 11–24–95; 8:45 am]

BILLING CODE 4710–32–M

[Public Notice No. 2289]

Notice of Briefing

The Department of State announces that Under Secretary for Economic, Business and Agricultural Affairs Joan Spero will host the first of what are anticipated to be quarterly briefings on U.S. foreign policy economic sanctions programs. The briefing will be held on Monday, December 18, 1995, from 2:00 p.m. until 3:30 p.m., in State Department conference room 1912, 2201 C Street NW, Washington, D.C.

This briefing will cover the sanctions regimes overseen by the State Department's Bureau of Economic and Business Affairs, with a focus on Iran, Cuba, and narcotics-related programs. Country and regional desk officers will be on hand to address inquiries regarding programs operating in other countries as well.

Please Note: Persons intending to attend the December 18 briefing must announce this not later than 48 hours before the briefing, and preferably further in advance, to the Department of State by sending a fax to 202–647–3953 (Office of the Coordinator for Business Affairs). The announcement must include name, company or association name, Social Security number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the C Street Main Lobby.

Dated: November 13, 1995.

David A. Ruth,

Senior Coordinator for Business Affairs.

[FR Doc. 95–28777 Filed 11–24–95; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

[Docket OST–95–852]

Programmatic Environmental Impact Statement; Commercial Expendable Launch Vehicle Operations

AGENCY: Office of Commercial Space Transportation (OCST), Department of Transportation.

ACTION: Notice of intent and request for comments.

SUMMARY: The Office of Commercial Space Transportation (OCST) intends to prepare a programmatic environmental impact statement (EIS) to address the environmental impact of commercial expendable launch vehicle operations. This action is necessary to update an environmental assessment the Office prepared in 1986. An EIS will encompass topics not previously addressed.

DATES: Comments must be submitted no later than December 27, 1995.

ADDRESSES: Written comments should be sent to Docket Clerk, Docket OST–95–852, Department of Transportation, 400 Seventh Street SW., Room PL–401, Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Nikos Himaras, Office of Commercial Space Transportation, 400 Seventh Street, SW., Washington, DC 20590. (202) 366–2929.

SUPPLEMENTARY INFORMATION: The Commercial Space Launch Act of 1984, as recodified at 49 U.S.C. Subtitle IX—Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. §§ 70101–70119 (1994) (the Act) grants the Secretary of Transportation the authority to license and regulate commercial launches of launch vehicles and the operation of launch sites within the United States or as carried out by its citizens. The Secretary has delegated this authority to the Office of Commercial Space Transportation (OCST).

Because licensing constitutes a major Federal action, section 415.31 of OCST's licensing regulations (14 CFR ch III) states that the potential environmental impacts of licensing commercial launch activities must be considered by the Office in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. (NEPA), the Council on Environmental Quality (CEQ) regulations, 40 C.F.R. §§ 1500–1508, and Department of Transportation Procedures for Considering Environmental Impacts, DOT Order 5610.1C.

A programmatic environmental assessment (EA) of commercial expendable launch vehicle programs (Programmatic EA) was prepared by OCST in February 1986, and has served as a basis for licensing determinations for commercial launches to date. Commercial expendable launch vehicle operations encompass a variety of launch vehicle technologies and a number of launch sites and systems. Expendable launch vehicles are one-use launch systems utilized to carry payloads to orbit or to suborbital trajectories. They include such launch vehicles as the Black Brant, Atlas, Delta, Pegasus, and Taurus families of rockets. They employ liquid fueled engines and solid rocket motors as booster stages. They also utilize on-board guidance systems which rely on chemical batteries and power cells. Ground-controlled, flight/thrust termination systems containing explosives and powered by batteries, are also integral parts of launch vehicles. These systems are used to protect persons and property on the surface of the earth from errant launch vehicles. Launch vehicle payloads usually contain propulsion and power systems similar to those found on launch vehicles.

Several factors warrant the preparation of a programmatic EIS to replace the 1986 EA. The commercial launch industry has grown significantly since 1986, and this trend is projected to continue. New launch vehicle technologies, propulsion systems, and associated fuels and oxidizers have been introduced and are under development. Additionally, environmental regulations have been issued or amended since the publication of the Programmatic EA in 1986. Lastly, significant research discoveries have been made since 1986 concerning ozone. These developments merit the more expansive review of an EIS. This review will allow OCST to continue to evaluate commercial applications for licenses for launch activities and ensure that the information used as a basis for a license determination is current.

The programmatic EIS for commercial expendable launch vehicle operations will evaluate a broader range of launch vehicle technologies, their propulsion systems, fuels, and oxidizers. Potential environmental impacts to terrestrial, water, and particularly atmospheric environments from launches, combustion by-products, noise, and other effects will be assessed. The programmatic EIS will examine potential environmental impacts from commercial launches broadly, without

site-specific consideration of launch locations. Analysis of potential environmental impacts from construction and launch operations at the proposed commercial launch sites will be completed through site-specific environmental assessments or impact statements.

Alternatives to the proposed commercial launch actions include either a total ban to launch activity or less restrictive approaches such as limits on the number of launches, the size or performance of the launch vehicles, and restrictions to launch mission profiles designed to limit the scope of environmental consequences of commercial launch activities. Constraints would be designed to mitigate the potential impacts on air, water, and land resources, biotic resources and affected communities both adjacent to and downrange from the launch site. The Programmatic EA of Commercial Expendable Launch Vehicle Programs issued in 1986, identified conditions which might result in potentially significant impacts. It addresses, for example, the effects of expendable launch vehicle exhaust products to the upper atmosphere, the release of liquid propellants to the marine environment and the leaching of contaminants from a launch facility to ground water. The Office will address any reasonable alternatives presented during the scoping process and subsequent comment periods. OCST requests that written comments on significant environmental issues be provided by interested parties. No public scoping meeting is scheduled at this time.

The content of comments from the public will determine whether this meeting is convened. Copies of the 1986 Programmatic Environmental Assessment may be obtained from the Office.

Issued in Washington, DC on November 13, 1995.

Frank C. Weaver,

Director, Office of Commercial Space Transportation.

[FR Doc. 95–28812 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualifications issues.

DATES: The meeting will be held on December 14, 1995 at noon.

ADDRESSES: The meeting will be held at the Regional Airlines Association, second floor presentation room, 1200 19th St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Ms. Judi Citrenbaum, (202) 267–9689, Office of Rulemaking, (ARM–100) 800 Independence Avenue, SW., Washington, DC 20591 or Ms. Regina Jones, (202) 267–9822 of the same office.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualifications issues. This meeting will be held December 14, 1995, at noon, at the Regional Airlines Association. The agenda for this meeting will include a progress report from the Aircraft Dispatcher Working Group. In addition, ARAC will vote on whether to accept a task the FAA assigned in November 1994 in which ARAC was requested to evaluate and recommend a course of action regarding comments received on the Operator Flight Attendant English Language Advance Notice of Proposed Rulemaking [59 FR 1845; April 18, 1994].

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on November 16, 1995.

H. Jan Demuth,

Acting Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–28741 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#96–03–I–00–SUN) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Friedman Memorial Airport, Submitted by Friedman Memorial Airport Authority, Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Friedman Memorial Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 27, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard T. Baird, Airport Manager at the following address: Friedman Memorial Airport Authority, P.O. Box 929, Hailey, ID 83333.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Friedman Memorial Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Simmons, (206) 227–2656; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–03–I–00–SUN) to impose and use at Friedman Memorial Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 17, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Friedman Memorial Airport Authority, Hailey, Idaho, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 20, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1996.

Proposed charge expiration date: August 31, 1999.

Total estimated PFC revenues: $621,000.00.

Brief description of proposed project: Upgrade runway safety areas.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: FAA Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, in aircraft with a seating capacity of 10 seats or less.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Friedman Memorial Airport.

Issued in Renton, Washington on November 17, 1995.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95–28843 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 95–89; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1994 Mercedes-Benz SL280 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994 Mercedes-Benz SL280 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for decision that a 1994 Mercedes-Benz SL280 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 December 27, 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 U.S.C. Part 592. As specified in 49 U.S.C. 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.

Liphardt & Associates, Inc. of Ronkonkoma, New York (''Liphardt'') (Registered Importer R–90–004) has petitioned NHTSA to decide whether 1994 Mercedes-Benz SL280 (Body Style 129) passenger cars are eligible for importation into the United States. The vehicle which Liphardt believes is substantially similar is the 1994 Mercedes-Benz SL320. Liphardt has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1994 Mercedes-Benz SL320, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 1994 Mercedes-Benz SL280 to the 1994 Mercedes-Benz SL320, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Liphardt submitted information with its petition intended to demonstrate that the 1994 Mercedes-Benz SL280, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1994 Mercedes-Benz SL320 that was offered for sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1994 Mercedes-Benz SL280 is identical to the certified 1994 Mercedes-Benz SL320 with respect to compliance with Standards 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,* 111 *Rearview Mirrors,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 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,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the 1994 Mercedes-Benz SL280 complies with the Bumper Standard found in 49 U.S.C. 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:* substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies and sidemarkers; (b) installation of U.S.-model taillamp

assemblies; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a buzzer relay and a warning buzzer in the steering lock electrical circuit.

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. 118 *Power Window Systems:* rewiring the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a seat belt warning buzzer; (c) installation of a knee bolster to augment the vehicle's passive restraint system.

Standard No. 214 *Side Impact Protection:* installation of reinforcing tubes.

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: November 20, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–28800 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Office of Hazardous Materials Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on November 20, 1995.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
10581–N	Luxfer UK Limited, Nottingham, England	4	01/01/1996
10606–N	General Oil Equipment Co., Inc., Tonawanda, NY	4	01/15/1996
10664–N	EFIC Corporation, San Jose, CA	1, 3, 4	01/30/1996
10704–N	Liquid Air Corporation, Walnut Creek, CA	1, 4	12/01/1995
10740–N	CSXT/BIDS, Philadelphia, PA	4	01/01/1996
10760–N	Applied Companies, San Fernando, CA	1	12/15/1995
10778–N	Liquid Carbonic Specialty Gas Corporation, Chicago, IL	1, 4	08/15/1995
10915–N	Luxfer USA Limited, Riverside, CA	1, 3, 4	01/15/1996
10945–N	Structural Composites Industries, Pomona, CA	1, 3, 4	01/15/1996
10996–N	AeroTech, Inc. & Industrial Solid Propulsion, Inc., Las Vegas, NV	1, 3	01/01/1996
10997–N	HR Textron, Inc., Pacoima, CA	3, 4	01/15/1996
11098–N	Alcan Smelters and Chemicals Ltd., Montreal, CN	3	01/15/1996
11117–N	Champion International Corporation, Hamilton, OH	4	01/15/1996
11151–N	SET Environmental, Inc., Wheeling, IL	4	12/01/1995
11153–N	SET Environmental, Inc., Wheeling, IL	4	12/01/1995
11157–N	Northwest Ohio Towing & Recovery, Beaverdam, OH	4	01/15/1996
11193–N	U.S. Department of Defense, Falls Church, VA	4	01/01/1996
11194–N	Pressure Technology, Inc., Hanover, MD	3, 4	01/15/1996
11249–N	UOP Shreveport, LA	4	01/15/1996
11284–N	Webb Chemical Service Corp., Muskegon, MI	4	01/15/1996
11302–N	Stolt Tank Containers Limited, Hull, North Humberside, EN	4	01/01/1996
11307–N	Jacx Enterprises, Highlands, TX	4	01/15/1996
11315–N	Southern Pacific Lines, Houston, TX	4	01/15/1996
11322–N	Hydra Rig, Inc., Ft. Worth, TX	1	01/15/1996
11340–N	McCain Foods, Inc., Easton, MA	4	01/15/1966
11380–N	Western Atlas International, Houston, TX	4	12/15/1995
11393–N	Hoechst Celanese Corp, Charlotte, NC	4	01/15/1996

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11395–N	Dart Polymers, Inc., Leola, PA	4	03/31/1996
11396–N	Laidlaw Environmental Services, LaPorte, TX	4	03/31/1996
11397–N	Speer Products Inc., Memphis, TN	4	12/01/1995
11401–N	Hewlett Packard Co., Santa Clara, CA	4	03/15/1996
11409–N	Pure Solve, Inc., Irving, TX	1	03/15/1996
11411–N	National Propane Gas Association, Arlington, VA	4	01/15/1996
11413–N	Dow Chemical, NA, Midland, MI	4	03/15/1996
11424–N	Midwest Corporate Air, Inc., Bellefontaine, OH	4	03/15/1996
11426–N	Laidlaw Environmental Services Inc., LaPorte, TX	4	01/01/1996
11427–N	Georgia Gulf Corp., Paquemine, LA	4	03/15/1996
11434–N	Fisher Scientific Company, Fair Lawn, NJ	4	03/15/1996
11435–N	Air Products & Chemicals, Inc., Allentown, PA	4	01/22/1996

MODIFICATIONS TO EXEMPTIONS

Application	Applicant	Reason for delay	Estimated date of completion
6922–M	Halocarbon Products Corp., N. Augusta, SC	3	02/15/1996
7073–M	Ethyl Corporation, Baton Rouge, LA	4	12/01/1995
9001–M	Chesterfield Cylinders Limited, Chesterfield, Derbyshire, EN	3	08/15/1995
9164–M	Farbicated Metals, Inc., San Leandro, CA	4	02/15/1996
10227–M	Caire, Inc., Bloomington, MN	4	01/15/1996
10463–M	Allied Universal Corp., Miami, FL	1	12/15/1995
10997–M	HR Textron Inc., Pacoima, CA	3, 4	01/15/1996

PARTIES TO EXEMPTION APPLICATIONS WITH MODIFICATION

Application no.	Applicant	Reason for delay	Estimated date of completion
11249–PM	Ashland Chemical Company, Columbus, OH	4	03/01/1996

[FR Doc. 95–28815 Filed 11–24–95; 8:45 am]
BILLING CODE 4910–60–M

Improving the Hazardous Materials Safety Program; Public Meetings Related to Regulatory Review and Customer Service

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting in Long Beach, California, to seek information from the public on regulatory reform and improved customer service for RSPA's hazardous materials safety program. This meeting replaces the meeting previously scheduled for November 16, 1995, in San Diego, California, which was canceled due to a lapse in funding for the Department of Transportation.

ADDRESSES: See Supplementary Information for specific time, location, and agenda.

DATES: January 25, 1996.

FOR FURTHER INFORMATION CONTACT: Edmund J. Richards, Interagency Hazardous Materials Program Coordinator, (202) 366–0656; or Suezett Edwards, Training and Information Specialist, (202) 366–4900; Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The President also directed that front line regulators ''* * * get out of Washington and create grassroots partnerships'' with people affected by agency regulations.

On September 11, 1993, the President signed an Executive Order on setting customer service standards. The Executive Order promotes continuing reform of the executive branch's management practices and operations to provide service to the public that matches or exceeds the best service available in the private sector. RSPA is seeking information from individuals and businesses impacted by its hazardous materials safety program to determine the kind and quality of services they want and their level of satisfaction with existing services.

An initial series of outreach meetings to address these two topics was held in April and May of this year in San Francisco, California; Chicago, Illinois; Clearwater and Tampa, Florida; Houston, Texas, and Minneapolis, Minnesota. Many participants requested that these meeting be continued on a regular basis and scheduled in areas of the country not previously covered. As a result, a second series of meetings is being held. Meetings have been held in Cambridge, Massachusetts; Philadelphia, Pennsylvania; Seattle, Washington; and Charlotte, North Carolina. The meeting to be held in Long Beach, California, will complete the second series.

Areas of Regulatory Concern

In calling on agencies to review, revise, and, when necessary, cut obsolete regulations, the President

directed each agency to consider the following issues:

- Is the regulation obsolete?
- Could its intended goal be achieved in more efficient, less obtrusive ways?
- Are there private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?
- Could private business, setting its own standards and being subject to public accountability, do the job as well?
- Could the states or local governments doe the job, making Federal regulation unnecessary?
- Can certain regulatory provisions be relaxed without unduly impacting safety?

Improvements to Customer Service

At the meeting, RSPA will solicit comments on the kind and quality of services its customers want and their level of satisfaction with the services currently provided by the hazardous materials safety program. RSPA will use the comments received to establish service standards and measure results against them; provide choices in both the sources of service and the means of delivery; make information, services, and complaint systems easily accessible; and provide a means to address customer complaints. RSPA's current customer services include providing guidance in understanding and complying with the HMR and processing exemptions, approvals, registrations, grant applications and enforcement actions. Other customer services include conduct of multimodal hazardous materials seminars, operation of the Hazardous Materials Information Exchange (HMIX) electronic bulletin board, and development and dissemination of training and information materials.

Conduct of the Meeting

The meeting will be informal and is intended to produce a dialogue between agency personnel and those persons directly affected by the hazardous materials safety programs, regulations and customer services. The meeting officer may find it necessary to limit the time allocated each speaker to ensure that all participants have an opportunity to speak. Conversely, the meeting may conclude before the time scheduled if all persons wishing to participate have been heard.

The meeting will be held on January 25, 1996, from 9:00 a.m. to 4:00 p.m. in the 7th Floor Conference Room of the Glenn Anderson Federal Building (11th Coast Guard District), 501 West Ocean Boulevard, Long Beach, California. A picture ID may be required to enter the building.

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

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–28813 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–60–M

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report on the results of the eleventh session of the United Nation's Sub-Committee on Exports on the Transport of Dangerous Goods (UNSCOE).

DATES: December 20, 1995 at 9:30 a.m.

ADDRESS: Room 6200, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to review the progress made by the eleventh session of the UNSCOE held from December 4, to 15, 1995 and to prepare for the next meeting of the UNSCOE to be held in July 1996. Topics to be covered include matters related to restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule, criteria for environmentally hazardous substances, review of intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous materials, infectious substances and international harmonization of classification criteria.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the eleventh session of the UN Sub-Committee meeting may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by contacting RSPA's Dockets Unit (202–366–5046). For more information on the use of the HMIX system, contact the HMIX information center, 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5:00 p.m. Central time. The HMIX may also be accessed via the Internet at hmix.dis.anl.gov.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council, Suite 301, 1101 Vermont Ave., N.W., Washington, DC 20005; telephone number (202) 289–4550.

Issued in Washington, DC, on November 20, 1995.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 95–28814 Filed 11–24–95; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 95–97]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: Notice is hereby given that on October 25, 1995, the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111.45(a) of the Customs Regulations, as amended (19 CFR 111.45(a)), ordered the revocation of license (No. 6884) issued to John V. Urbano to conduct Customs business.

Dated: November 20, 1995.

Anne K. Lombardi,

Deputy Director, Trade Compliance.

[FR Doc. 95–28725 Filed 11–24–95; 8:45 am]

BILLING CODE 4820–02–P

Office of Foreign Assets Control

List of Specially Designated Terrorists Who Threaten to Disrupt the Middle East Peace Process

AGENCY: Office of Foreign Assets Control, Treasury

ACTION: Notice of Blocking

SUMMARY: The Treasury Department is adding the name of an individual to the

list of blocked persons who have been found to have committed, or to pose a risk of committing, acts of violence that have the purpose of disrupting the Middle East peace process or have assisted in, sponsored, or provided financial, material or technological support for, or service in support of, such acts of violence, or are owned or controlled by, or to act for or on behalf of other blocked persons.

EFFECTIVE DATE: November 27, 1995 or upon prior actual notice.

FOR FURTHER INFORMATION: Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, DC 20220; Tel. (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the Federal Register. By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disks or paper copies. This file is available for downloading in WordPerfect, ASCII, and Adobe Acrobat™ readable (*.PDF) formats. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem dial 703/321–3339, and select self–expanding file ''T11FR00.EXE'' in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

On January 24, 1995, President Clinton signed Executive Order 12947, ''Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process'' (the ''Order'' or ''E.O. 12947''). The Order blocks all property subject to U.S. jurisdiction in which there is any interest of 12 Middle East terrorist organizations included in an Annex to the Order. In addition, the Order blocks the property and interests in property of persons designated by the Secretary of State, in coordination with the Secretary of Treasury and the Attorney General, who are found (1) to have committed or to pose a significant risk of disrupting the Middle East peace process, or (2) to assist in, sponsor or provide financial, material, or technological support for, or services in support of, such acts of violence. The order further blocks all property and interests in property subject to U.S. jurisdiction in which there is any interest of persons determined by the Secretary of the Treasury, in coordination with the Secretary of State and the Attorney General, to be owned or controlled by, or to act for or on behalf of any other person designated pursuant to the Order (collectively ''Specially Designated Terrorists'' or ''SDTs'').

The order further prohibits any transaction or dealing by a United States person or within the United States in property or interests in property of SDTs, including the making or receiving of any contribution of funds, goods, or services to or for the benefit of such persons.

Designations of persons blocked pursuant to the Order are effective upon the date of determination by the Secretary of State or his delegate, or the Director of the Office of Foreign Assets Control acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of publication in the Federal Register, or upon prior actual notice.

The following name is added to the list of Specially Designated Terrorists:

SHALLAH, Dr. Ramadan Abdullah (a.k.a. ABDALLAH, Ramadan) (a.k.a. ABDULLAH, Dr. Ramadan) (a.k.a. SHALLAH, Ramadan Abdalla Mohamed); Damascus, Syria; Secretary General of the PALESTINIAN ISLAMIC JIHAD; DOB: January 1, 1958; POB: Gaza City, Gaza Strip; Passport No. 265 216 (Egypt); SSN 589–17–6824.

Dated: November 6, 1995.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: November 6, 1995.

Dennis M. O'Connell

Acting Deputy Assistant Secretary (Regulatory, Tariff & Law Enforcement).

[FR Doc. 95–28724 Filed 11–21–95; 4:10 pm]

BILLING CODE 4810–25–F

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, M:ES, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the Office of the Chief Inspector are as follows:

Michael Dolan, Deputy Commissioner, Chair
James Donelson, Acting Chief, Taxpayer Service
David Mader, Chief, Management and Administration
Dennis Schindel, Deputy Assistant Inspector General for Audit Operations, Department of the Treasury

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978 (43 FR 52122).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–28898 Filed 11–24–95; 8:45 am]

BILLING CODE 4830–01–U

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, M:ES, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for Regional Commissioners are as follows:

Michael Dolan, Deputy Commissioner, Chair
Philip Brand, Chief Compliance Officer
James Donelson, Acting Chief, Taxpayer Service
David Mader, Chief, Management and Administration

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978 (43 FR 52122).

Margaret Milner Richardson,

Commissioner of Internal Revenue

[FR Doc. 95–28899 Filed 11–24–95; 8:45 am]

BILLING CODE 4830–01–U

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, M:ES, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the Office of the Commissioner and Appeals are as follows:

Michael Dolan, Deputy Commissioner, Chair
Gary Bell, Chief Inspector
Philip Brand, Chief Compliance Officer
David Mader, Chief, Management and Administration

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978 (43 FR 52122).

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 95–28900 Filed 11–24–95; 8:45 am]

BILLING CODE 4830–01–U

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective October 1, 1995.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, M:ES, Room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives other than Chief Officers, Regional Commissioners and senior executives in Inspection and the Office of the Commissioner are as follows:

Michael Dolan, Deputy Commissioner, Chair
Gary Booth, Regional Commissioner, Midstates Region
Marilyn Day, Regional Commissioner, Western Region
James Donelson, Acting Chief, Taxpayer Service
Herma Hightower, Regional Commissioner, Northeast Region
Walter Hutton, Acting Chief Information Officer
Robert Johnson, Regional Commissioner, Southeast Region

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978 (43 FR 52122).

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 95–28901 Filed 11–24–95; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. 60, No. 227
Monday, November 27, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, November 30, 1995, 9:30 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

(Meeting was previously scheduled for Friday, November 17, 1995. Due to the Government Shutdown, the meeting was canceled.)

Matters to be Considered

1. CPSC Vice Chairman

The Commission will elect a Vice Chairman.

2. FY 1996 Operating Plan

The staff will brief the Commission on issues related to the Commission's Operating Plan for Fiscal Year 1996.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: November 21, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–29078 Filed 11–22–95; 3:34 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

DATE & TIME: Friday, December 1, 1995, 9:30 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter to be Considered

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: November 21, 1995.

Sadye E. Dunn,

Secretary.

[FR Doc. 95–29079 Filed 11–22–95; 3:34 pm]

BILLING CODE 6355–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Wednesday, November 22, 1995

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Wednesday, November 22, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Mass Media—*Title:* Broadcast Applications of CBS and Westinghouse. *Summary:* The Commission will consider the applications of CBS, Inc. and Westinghouse Electric Corporation for the transfer of control of the CBS broadcast stations to Westinghouse.

The prompt and orderly conduct of Commission business requires that the meeting be held with less than 7-days notice.

Action by the Commission November 21, 1995. Commissioners Hundt, Chairman; Quello, Barrett, Ness and Chong voting to consider this item.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: November 21, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28988 Filed 11–22–95; 11:38 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Tuesday, November 28, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, November 28, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Cable Services—*Title:* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—Rate Regulation: Uniform Rate-Setting Methodology. *Summary:* The Commission will consider establishing a methodology under which cable operators may offer uniform services at uniform prices in multiple franchise areas.

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*The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

2—Wireless Telecommunications and Mass Media—*Title*: Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures (WT Docket No. 95–5). *Summary*: The Commission will consider whether to replace the current antenna structure clearance process, which affects all licensees on such structures, with a simplified registration procedure affecting primarily structure owners and whether to amend Parts 1, 17, 21, 22, 23, 24, 25, 73, 74, 78, 80, 87, 90, 94, 95, and 97 to reflect revised FAA painting and lighting recommendations and to implement new statutory requirements, holding owners primarily responsible for painting and lighting antenna structures.

3—Common Carrier—*Title:* Access to Telecommunications Equipment and Services by Persons with Disabilities (CC Docket No. 87–124). *Summary*: The Commission will consider action concerning wireline telephone Hearing Aid Compatibility rules recommended by the Commission's Hearing Aid Compatibility Negotiated Rulemaking Committee.

4—International—*Title*: Market Entry and Regulation of Foreign-affiliated Entities (IB Docket No. 95–22, RM–8355, RM–8392). *Summary*: The Commission will consider action concerning standards for entry and regulation of foreign carriers seeking to provide services in the U.S. telecommunications market.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated: November 21, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28987 Filed 11–22–95; 11:38 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:01 a.m. on Tuesday, November 21, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's corporate and supervisory activities.

Application of The Hudson City Savings Institution, Hudson, New York, an insured State-chartered mutually-owned savings bank and Bank Insurance Fund member, for consent to merge, assume assets, liabilities, and certain obligations of Valatie Savings and Loan Association, Valatie, New York (''Valatie Savings''), an insured State-chartered mutually-owned savings and loan association and Savings Insurance Fund member; and for consent to participate in an optional conversion transaction.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of 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, D.C.

Dated: November 21, 1995.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 95–28985 Filed 11–22–95; 11:38 am]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 60 FR 57885, November 22, 1995.

PREVIOUSLY ANNOUNCED TIME:

TIME AND DATE: 10:00 a.m., Thursday, November 16, 1995.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

CHANGE IN THE MEETING: The discussion of the item listed has been canceled. *Thunder Basin Coal Co.*, Docket Nos. WEST 94–148–R, etc.

It was determined by a unanimous vote of Commissioners that this meeting be canceled and no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: November 21, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–29077 Filed 11–22–95; 3:33 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 29, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 22, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–28986 Filed 11–22–95; 11:38 am]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–95–027]

TIME AND DATES: December 5, 1995 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–724 (Final) (Manganese Metal from the People's Republic of China)—briefing and vote.
5. Outstanding action jackets:
   1. CO69–95–001: Proposal on delegation of budget authority.
   2. EC–95–011: Institution of investigation under section 332 of the Tariff Act of 1930 on U.S. Interests in APEC Trade Liberalization.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 22, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–29052 Filed 11–22–95; 2:09 pm]

BILLING CODE 7020–02–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: [60 FR 57271, November 14, 1995]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: November 14, 1995.

CHANGE IN MEETING: Cancellation.

The closed meeting scheduled for Thursday, November 16, 1995, at 10:00 a.m., has been cancelled.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: November 22, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–28991 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

Federal Register

Monday
November 27, 1995

Part II

Department of Housing and Urban Development

Office of the General Counsel; Notice of Application—Foreclosure Commissioners

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the General Counsel Notice of Application—Foreclosure Commissioners

[Docket No. FR–3950–N–01]

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of application—foreclosure commissioners.

SUMMARY: This notice requests applications from parties who seek approval to act as foreclosure commissioners under the Single Family Mortgage Foreclosure Act of 1994 (the ''Act''), 12 U.S.C. 3751–3768.

DATES: Applications may be submitted after the publication of this notice to HUD's Field Assistant General Counsel serving the geographic area in which the party proposes to serve as commissioner. A listing of Field Assistant General Counsel is included at the end of this notice. Applications may not be submitted by facsimile (FAX).

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 9240, Washington, DC 20410, (202) 708–1272. A telecommunications device for the hearing impaired (TDD) is available at (202) 708–3259. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for emergency review and approval under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB control number under this section, when approved, will be announced by separate notice in the Federal Register.

Background

Section 804 of the Single Family Mortgage Foreclosure Act of 1994 (the Act), 12 U.S.C. 3753, authorizes the Secretary of HUD (the Secretary) to exercise a statutory nonjudicial power of sale with respect to any single family mortgage held by the Secretary pursuant to Title I or Title II of the National Housing Act or securing a loan obligated under Section 312 of the Housing Act of 1964, as further described in Section 803 of the Act (12 U.S.C. 3752). Upon a determination that a defaulted Secretary-held mortgage should be foreclosed, the Act permits the Secretary to name a foreclosure commissioner to conduct the foreclosure and sale. The commissioner may be an individual (including an official of State or local government), a group of individuals, an association, a partnership, a corporation or an organization (12 U.S.C. 3752(7) and 12 U.S.C. 3754). The Act further provides that if the foreclosure commissioner is a natural person, he is to be a resident of the State in which the security property is located; if not a natural person, the designee must be authorized to transact business under the laws of the State in which the security property is located. In order to be designated a commissioner, a person must be responsible, financially sound and competent to conduct a foreclosure.

The Secretary's power to designate a commissioner and to designate a substitute commissioner to replace a previously designated commissioner has been delegated to the HUD General Counsel. Regulations implementing the Act were published on November 15, 1995 (60 FR 57484).

By this notice, the General Counsel invites applications from all qualified parties who wish to be designated as foreclosure commissioners. The requested information will be used to determine if an applicant is responsible, financially sound, and competent to conduct a foreclosure. Each party submitting an application will be notified if its application has been accepted or rejected. All parties whose applications are accepted will be placed on a list of designated commissioners approved to act in a specific geographic area. When HUD determines that a particular mortgage should be foreclosed under the Act, the case will be referred to a designated foreclosure commissioner for foreclosure. Designation as a commissioner, however, does not necessarily provide any assurance that all commissioners so designated will subsequently have cases referred by HUD for foreclosure. Also, in some States HUD may decide to continue to foreclose under State law or other Federal law.

Each party seeking designation as a foreclosure commissioner must submit the current information, as listed below, to HUD's Field Assistant General Counsel serving the geographic area in which the party proposes to serve as commissioner. Those Field Assistant General Counsel are also listed below.

Current Information to be Submitted

1. Name
2. Business Address
3. Geographic area in which the applicant wishes to conduct foreclosures. (List only States or areas in States in which the applicant is a resident or is duly authorized to transact business.)
4. If the applicant is not a natural person, the names and business addresses of the people who would actually perform the commissioner's duties.
5. Description of the applicant's experience in conducting mortgage foreclosures or in related activities which would qualify the applicant to serve as a foreclosure commissioner.
6. Evidence of the applicant's financial responsibility.

Any party that has been designated as a foreclosure commissioner for HUD-held multifamily mortgages may submit a letter to the appropriate Field Assistant General Counsel requesting designation as a foreclosure commissioner for single family mortgages. This letter of interest would be acceptable in lieu of the preceding information, unless any of the information requires updating.

Assistant General Counsel to Receive Applications

For Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 10 Causeway St., Room 375, Boston, Massachusetts 02222–1092.

For New Jersey and New York:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 26 Federal Plaza, New York, New York 10278–0068.

For Delaware, Maryland, Pennsylvania, Virginia, West Virginia and Washington, D.C.:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 100 Penn Square East—The Wanamaker Building, Philadelphia, Pennsylvania 19107–3390.

For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Puerto Rico:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 75 Spring St. S.W.—Richard Russell Federal Bldg., Atlanta, Georgia 30303–3388.

For Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 77 West Jackson Blvd.—Ralph Metcalfe Federal Bldg., Chicago, Illinois 60604–3507.

For Arkansas, Louisiana, New Mexico, Oklahoma and Texas:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 1600 Throckmorton—P.O. Box 2905, Fort Worth, Texas 76113–2905.

For Iowa, Kansas, Missouri, and Nebraska:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 400 State Avenue—Gateway Tower II, Kansas City, Kansas 66101–2406.

For Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming:

Assistant General Counsel, U.S. Dept. of Housing & Urban Development, 633 17th St.—First Interstate Tower North, Denver, Colorado 80202–3607.

For Arizona, California, Hawaii, and Nevada:

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Authority: 12 U.S.C. 1715b, 12 U.S.C. 3751–3768, 42 U.S.C. 3535(d).

Dated: October 20, 1995.

Nelson A. Díaz,

General Counsel

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Part III

Department of Housing and Urban Development

24 CFR Parts 103 and 125

Fair Housing Initiatives Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Parts 103 and 125

[Docket No. FR–3480–F–03]

RIN 2529–AA62

Fair Housing Initiatives Program

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Fair Housing Initiatives Program (FHIP) regulation at 24 CFR part 125 to provide for the implementation of statutory amendments pertaining to private enforcement initiatives; the funding of fair housing organizations; and the implementation of national (including national fair housing month), regional and local, and community-based education and outreach programs. In addition, it corrects a cross-reference contained in part 103.

DATES: Effective date: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Maxine Cunningham, Director, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in § 125.105 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2529–0033. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Background

A. Program Authority and Description

The Fair Housing Act—Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19—charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing, and in other real estate-related transactions. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws, and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987 (1987 Act), 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992), substantially amends section 561 of the Housing and Community Development Act of 1987. On April 1, 1993, the Department published an Advance Notice of Proposed Rulemaking (ANPR) (58 FR 17172) requesting comment on HUD's implementation of section 905 of the Housing and Community Development Act of 1992. The Department received three comments in response to the ANPR.

On August 29, 1994, HUD published a proposed rule to amend the Fair Housing Initiatives Program (59 FR 44596). HUD invited public comments for consideration in drafting a final rule. During the comment period, which ended October 28, 1994, HUD received 15 public comments, 7 from individuals (6 of these being identical form comments submitted in support of comments submitted by an individual broker), 5 from fair housing enforcement organizations, 1 from an organization representing realtors, 1 from an organization representing lenders, and 1 from a lending firm. These comments are discussed in the following section.

B. Public Comments on the Proposed Rule

The public commenters focused on the following issues, listed with their proposed rule section numbers:

1. Definition of Expert Witness: § 125.103.
2. Definition of Meritorious Claims: § 125.103.
3. Waivers: § 125.106.
3. Eligible Activities: § 125.303.
4. Funding for Regionally Produced and Locally Produced Media Programs: §§ 125.303(b)(1) & 125.303(c).
5. Additional Points for Cooperating with Real Estate Industry Organizations: § 125.303(b)(2)(i).
6. Community-based programs: § 125.303(d).
7. Coordination of Activities: § 125.303(f).
8. Multi-year Grants Subject to Annual Performance Evaluation: § 125.401.
9. Guidelines for Private Enforcement Testing: § 125.405.
10. Continued Development of Existing Organizations: § 125.502.
11. Operating Budget Limitations: § 125.502(c).
12. Establishing New Organizations: § 125.503.
13. Awarding Funding to Most Resource-Poor Applicant.
14. Distribution of FHIP Funds According to an Allocation Formula.
15. Impact on Small Entities—Regulatory Flexibility Act.
16. Other Miscellaneous Comments.

Definitions of Expert Witness and (Qualified) Fair Housing Organization: Proposed Section 125.103

One commenter supported the definition of *expert witness* that would permit reimbursement for expert witness fees in cases that settle before the experts testify, and the requirement in the definitions of *fair housing enforcement organization* and *qualified fair housing enforcement organization* that eligible organizations must have conducted complaint investigation, testing and enforcement activities for prescribed periods of time.

Department's response: No response is necessary, since this comment agrees with the proposed rule.

Definition of Meritorious Claims: Proposed Section 125.103

In § 125.103 of the proposed rule, the Department defines *meritorious claims* to mean ''enforcement activities that resulted in lawsuits, consent decrees, legal settlements, HUD conciliations and agency initiated settlements with the outcome of monetary awards for compensatory and/or punitive damages to plaintiffs or complaining parties, or affirmative relief and monitoring.''

Two commenters with six concurring commenters objected to the proposed rule replacing ''bona fide allegation'' with the ''meritorious claim'' standard. These commenters asserted that the proposed rule change will allow fair housing organizations to engage in harassing behavior, and that the

meritorious claim standard will make any business that has made an economic decision to settle out of court an instant target of fair housing groups.

One commenter also felt that the definition in the proposed rule is too broad since almost every claim falls into the proposed definition. This comment recommended that the Department change the definition of *meritorious claim* to read: ''enforcement activities that resulted in a monetary award for compensatory or punitive damages, or a settlement for an amount significantly in excess of the normal costs of defense.''

In contrast, two commenters supported the Department's decision to define *meritorious claims*, but suggested that ''affirmative relief and monitoring'' require more than an agreement with a real estate company, lender or insurance company to ''promote'' Fair Housing. These commenters recommended that HUD define affirmative relief to mean developing an explicit marketing program to gain customers, building or renovating a branch office, providing below market rate loans to targeted neighborhoods, hiring minority employees, and changing the compensation basis for commissioned loan officers.

Department's response: Some of these comments have misinterpreted the role of ''meritorious claims'' in the FHIP regulation. This definition is used for the purpose of defining the terms *fair housing enforcement organization* and *qualified fair housing enforcement organization*. To qualify as one of these organizations, it is necessary, under the statute, to be ''engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of *meritorious claims*'' (emphasis added).

As for the commenters that suggested additional definition of the phrase ''affirmative relief and monitoring'' as used in *meritorious claims*, the Department believes that, taken as a whole, the proposed rule's definitions of *fair housing enforcement organization* and *qualified fair housing enforcement organization* are sufficiently stringent to ensure that only experienced organizations qualify. *Meritorious claims*'' is only one element in these definitions, which also include the elements of complaint intake, complaint investigation, and testing for fair housing violations.

This definition is clarified in the final rule to include conciliationsith substantially equivalent agencies (under 24 CFR 115.6).

Waivers: Proposed Section 125.106

Two commenters objected to the waiver provision of § 125.106. One commenter recognized the need for flexibility, but suggested that any waiver to the rule should be subject to public comment.

Department's response: The very purpose of the waiver provision is to provide needed flexibility that would be lost by subjecting each waiver to public comment. Such a waiver provision is a common feature of many HUD rulemakings (see the notice, ''Waiver of Regulations and Directives Issued by HUD; Supersession of Redelegations of Authority,'' at 56 FR 16337, April 22, 1991). The waiver provision at § 125.106 is modified by adding the phrase ''Upon determination of good cause,'' and provides that the waiver be issued by the Assistant Secretary.

As part of its overall process of reinventing regulations, the Department is developing a separate waiver provision rule that would apply to every HUD regulation. When this cross-cutting regulation becomes effective, this program-specific waiver provision will be eliminated.

Eligible Activities: Proposed Section 125.203

One commenter suggested adding the following activities to § 125.203: (1) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices; (2) discovering and providing remedies for discrimination in the public and private real estate markets and real estate related transactions, including, but not limited to, making or purchasing of loans or the provision of other financial assistance sales and rentals of housing and housing advertising; and (3) carrying out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under the Fair Housing Act.

Department's response: Applications for the activities listed would not be excluded from consideration, even without being specifically listed. The preface to the list of eligible activities at § 125.203 stated that eligible activities ''may include (but are not limited to) the following:''. By only suggesting activities that would be acceptable without attempting to provide an exhaustive or exclusive list, this approach may have caused some confusion by seeming to confer exclusive status on the listed activities. To prevent such problems, and as a part of the Department's efforts to streamline its rules and eliminate unnecessary regulatory verbiage, such advisory, non-exclusive lists are being eliminated from the final rule. The final rule provides at § 125.104(d) that eligible activities will be announced in Notices of Funding Availability published in the Federal Register.

Funding for Regionally Produced and Locally Produced Media Programs: Proposed Sections 125.303(b)(1) & 125.303(c)

Two commenters objected to permitting regional and local education and outreach funds to be used to develop radio, television and print public service announcements. One of these argued that it is not an efficient expenditure of limited funds, since money will be wasted duplicating what should be developed and produced on a national level. This commenter suggested that funds should be used to develop a high quality national media campaign, and HUD should provide remaining resources to other groups to disseminate the campaign.

Department's response: A complete ban on the development of regional and local media materials is not appropriate. The Department seeks to encourage innovation while avoiding duplication in its award of FHIP funds.

Additional Points for Cooperating with Real Estate Industry Organizations: Proposed Section 125.303(b)(2)(i)

One commenter supported the proposed rule's giving an applicant preference points if the applicant demonstrates cooperation with real estate industry organizations.

In contrast, two commenters objected to HUD encouraging cooperation with the real estate industry by awarding ''preference points'' to applicants which cooperate with the real estate industry. One of these commenters argued that industry would not cooperate or otherwise support an effort that would encourage people to file complaints against members of the industry.

Department's response: Although HCDA 1992 section 905, the statutory amendment and expansion of FHIP, acknowledges (in subsection 905(a), Findings) the evidence of continuing and pervasive discrimination in housing markets, it also recognizes that ''continuing educational efforts by the real estate industry are a useful way to increase understanding by the public of their fair housing rights and responsibilities''. Later, in subsection 905(d)(1), the statute provides that, ''The Secretary shall encourage cooperation with real estate industry organizations in the national education

and outreach program.'' The Department wishes to encourage every effort to reach the goal of compliance with the letter and the spirit of the Fair Housing Act, and believes, along with the Congress, that the real estate industry can make valuable contributions to achieving this goal. The two comments disagreeing with the preference for cooperation with the industry assume, justifiably, that persons aware of their rights would more likely act to enforce those rights when they are violated. However, this assumption does not lead to the conclusion that the industry charged with observing those rights would be uncooperative in informing the public and its individual members of the industry's responsibilities. To the contrary, the industry would benefit through reduced compliance costs from active engagement in informing the public of their rights and the resulting greater awareness of its own responsibilities. Further, it would be fair to assume that the national goals of the Fair Housing Act can be more quickly and efficiently achieved with the active, positive participation of industry than without it.

Community-Based Programs: Proposed Section 125.303(d)

One commenter objected to HUD's interpretation of the term ''community based activities'' in the authorizing statute to allow HUD to set aside a special funding for community based neighborhood groups. This commenter argued that Congress intended the term ''community based activities'' to mean that education and outreach activities could be developed for local communities by fair housing organizations or other eligible applicants.

Department's response: Although this comment is not relevant to the rule itself, which does not address special funding for community based groups, the Department agrees that education and outreach activities could be developed for local communities by fair housing organizations or other eligible applicants. However, this comment provides yet another opportunity for the Department to stress that in order to be flexible and responsive to diverse needs, the FHIP will be administered so as to permit the targeting of funds in NOFAs to specific types of activities, locations, and recipients.

The description of activities that are ''community-based'' in scope is also modified in the final rule to use the more familiar term ''neighborhood'' rather than ''geographic area.''

Coordination of Activities: Proposed Section 125.303(f)

One commenter suggested expanding § 125.303(f) to require that a private FHO provide evidence with the application that it has consulted with State and/or local public enforcement agencies to coordinate activities to be funded under the *Private Enforcement Initiative* with existing and/or planned public enforcement efforts.

Department's response: The Department disagrees with this comment. Consultation and coordination of public and private efforts could have a negative impact on an applicant's ability to maintain the confidentiality of proposed testing targets and strategies.

Multi-Year Grants Subject to Annual Performance Evaluation: Proposed Section 125.401

Five commenters supported making funding of PEI multi-year grants subject to a performance review of the previous year's activities. One of these commenters suggested that HUD solicit comments from interested parties, including those involved as defendants to FHIP funded testing complaints, when conducting the performance review. Two of these commenters also suggested that HUD continue funding if HUD fails to complete the review in a timely fashion since a recipient may not have the cash reserves to maintain staff until a review is completed. These two commenters also suggested that HUD consider four year funding cycles since many enforcement actions require up to four years or more to complete litigation, or monitor requirements of consent decrees or HUD conciliations.

Department's response: Each of these comments may be implemented by the Department in a NOFA or through its own internal procedures. HUD has already initiated multi-year funding in its FHIP NOFAs and intends to continue to do so. HUD will not discontinue funding if it is at fault for not completing a performance review in a timely fashion, but if the Department is unable to complete its review due to recipient deficiencies (such as inadequate accounting for funds and activities), funds may be discontinued. Interested parties may contact the Department at any time with information relevant to its evaluation of FHIP-funded recipients. With respect to comments from those involved as defendants as a result of FHIP-funded testing, while these persons are free to comment, their status as defendants in a pending action would normally preclude the Department from acting on their comments while the action is pending.

Eligible Applicants Under the Private Enforcement Initiative: Proposed Section 125.402

One commenter objected to awarding PEI funds to non-testing groups. Only groups with at least one year of experience in complaint intake, investigation, testing, and enforcement should get PEI awards.

Department's response: The Department agrees with this and related comments. Please refer to the discussion under the heading, ''Continued Development of Existing Organizations: Proposed 125.502'', below.

Guidelines for Private Enforcement Testing: Proposed Section 125.405

Section 125.405 is currently entitled, ''Guidelines for private enforcement testing.'' The proposed rule would remove the testing guidelines in § 125.405, but a new § 125.107 would prohibit testers from having prior felony convictions or convictions of crimes involving fraud or perjury, and would require that testers receive training or be experienced in testing procedures and techniques.

Three commenters with six concurring commenters objected to the absence of a consistent standard for conducting testing under the proposed rule. In general, these commenters criticized the Department for removing most of § 125.405, and stressed the need for regulatory controls to ensure that testers are objective and credible. These commenters also stressed the need for the Department to ensure that grantees do not have any conflicts of interest which might interfere with testing.

One of these commenters with six concurring commenters asserted that HUD erroneously assumes that an established fair housing organization knows how to conduct valid testing and/or has the integrity to conduct valid testing. These commenters also alleged that not all reports are accurate and true, and recommended that HUD more closely scrutinize information submitted by fair housing organizations in grant applications and quarterly reports. They agreed the final rule should prohibit a fair housing organization receiving FHIP funding from owning a for-profit subsidiary which directly competes with licensed real estate brokers, and that at a minimum, a for-profit subsidiary of a fair housing organization should not have any access to the ''set-aside'' apartments that are included in a settlement agreement with a fair housing organization.

Three commenters made suggestions as to specific criteria which should be contained in the final rule. One commenter suggested that the final rule require the following: (1) Grantees of FHIP testing and enforcement funds must demonstrate that testers have the training or experience to properly conduct tests; (2) Testers must objectively report their findings; (3) Grantees may not compromise the integrity of tests and tester reports; (4) Grantees must ensure that potential conflicts of interest do not interfere with the design, conduct or evaluation of tests; and (5) Grantees will file complaints/lawsuits as a result of testing only if there is a reasonable cause to believe that a violation of the Fair Housing Act occurred.

This commenter further objected to general testing where no bona fide allegation of discrimination exists, stating that general testing poses a hardship on the industry by taking valuable time for the testing to determine whether discrimination exists and takes resources away from testing those situations where there is an allegation of discrimination. This commenter opined that the purposes of the FHIP program support requiring a bona fide allegation prior to commencement of testing.

One commenter with six concurring commenters recommended that HUD require the following before initiating any action: (1) Fair housing organizations submit for HUD review and approval detailed documentation concerning any ''bona fide'' allegation of fair housing violations; (2) HUD give written approval to a fair housing organization before commencement of testing; and (3) once the fair housing organization begins testing, the fair housing organization submits to HUD detailed activity logs and written test conclusions.

Similarly, yet another commenter suggested that HUD maintain the following in the final rule: (1) Recipients of HUD FHIP funding may not have an economic interest in the outcome of the test for discrimination, have a specific bias toward the business tested, be a licensed competitor of the respondent, be related to one of the parties in the case, or have any other specific bias or conflict of interest which would prevent or limit his or her objectivity; (2) Testers may not communicate their test results with one another; and (3) Testers must report all relevant information.

In contrast, three commenters supported the removal of testing guidelines. One of these commenters reasoned that federal courts and HUD ALJs are in the best position to determine the validity of testing procedures. This commenter also stated that testing is continually evolving to accommodate changing discriminatory practices identified in the market place, and suggested that the rule should be flexible enough to accommodate changing practices. However, the commenter suggested that the final rule provide that HUD will scrutinize applicants that have little or no legal administrative results for enforcement activities.

Department's response: HUD agrees with the commenters who recommend conflict of interest provisions be maintained in the rule, and most of the conflict provisions at § 125.405(c)(3) of the current rule are included with the tester provisions at § 125.107 of this final rule.

HUD also agrees with the commenter who stated that testing is continually evolving to accommodate changing discriminatory practices identified in the market place, and that the rule should be flexible enough to accommodate changing practices. For these reasons, the Department is not including additional specific requirements for testing in this final rule, including the requirement for a bona fide allegation prior to testing.

Continued Development of Existing Organizations: Proposed Section 125.502

Two commenters objected to HUD making the third category of applicants (''[n]onprofit groups organizing to build their capacity to provide fair housing enforcement'') eligible to receive FHIP funding under § 125.502. One of the commenters suggested that funding for this category is already available under § 125.503, Establishing New Organizations, and that funding for ''capacity building'' should only be used to assist existing groups. This commenter also felt that since all of the activities under private enforcement are eligible for funding, HUD is undermining the intent of the statute to promote high quality enforcement activities. The commenter warned that HUD should consider the practical risks of providing enforcement funds to organizations with no proven track record. This commenter further disagreed with HUD that making this category of nonprofit groups eligible for funding will increase the number of private non-profit fair housing organizations, and suggested that qualifications are more important than numbers. Finally, this commenter argued that mere status as a nonprofit organization should not qualify the organization to receive funds for fair housing enforcement since many nonprofits opposing fair housing efforts will be eligible.

Department's response: The Department does not agree with these comments. Section 905 specifically includes nonprofit groups organizing to build their capacity to provide fair housing enforcement as eligible for continued development funding. If continued development funding were limited to fair housing organizations, it would not differ from the Private Enforcement Initiative, and there would be no need for this separate category of FHIP activities. As distinct from activities under proposed § 125.503, which are specifically intended to result in the establishment of new organizations, the activities funded under proposed § 125.502 are intended to permit existing organizations, whether or not they are already fair housing organizations, to build their capacity to provide fair housing enforcement. The argument that nonprofits opposing fair housing efforts will be funded is not valid, since funds are competitively awarded after an evaluation of the proposed activities. Activities that oppose fair housing efforts would not be funded, and any grantee who did engage in activities opposing fair housing activities would be liable for misuse of funds.

To preserve the distinct characters of the Private Enforcement Initiative and the Fair Housing Organization Initiative highlighted by these comments, and in response to a comment discussed above (Eligible Applicants under the Private Enforcement Initiative: Proposed § 125.402), the final rule limits eligible applicants for PEI funding to qualified fair housing organizations (QFHOs) and fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

Establishing New Organizations: Proposed Section 125.503

One commenter suggested that the final rule contain criteria that an applicant must satisfy to establish a new organization. The commenter suggested that an applicant should have a firm grasp of all federal, state and local fair housing laws, successful experience in investigating, testing, conciliating and litigating fair housing complaints or access to training to receive high quality assistance in the development of the new organization.

With regard to targeted areas (§ 125.503(c)), this commenter also

suggested that HUD should consider funding applicants if the applicant demonstrates the need—the existence of a FHAP or QFHO within the state should never outweigh the documented need for private enforcement activities.

Department's response: The Department initially reasoned, in the proposed rule, that addressing the national need for private fair housing enforcement organizations would best be served by making this category of funding for establishing new organizations broadly available. The commenter emphasizes the broad range of specialized knowledge and experience that would be necessary to establish a successful, efficient enforcement organization, and the Department agrees with the validity of these observations. In order to accommodate both concerns (national need and specialized knowledge), the final rule provides that QFHOs, FHOs, and other organizations with at least three years of experience in complaint intake, complaint investigation, and enforcement of meritorious claims involving the use of testing evidence are eligible applicants for funding to establish new organizations. This will maximize the pool of eligible applicants, while still limiting it to those with substantial fair housing enforcement experience.

The Department also agrees with the comment that the rule should permit funding applications for areas with a demonstrated need for a fair housing organization. The Department, in its FHIP NOFA published annually in the Federal Register, may identify targeted unserved and underserved areas that will receive priority for funding under the Establishing New Organizations component of the Fair Housing Organizations Initiative. The final rule provides that an applicant may also seek funding to establish a new organization in a locality not identified as a target area, but in such a case, the applicant must submit sufficient evidence to establish the proposed area as being currently underserved by fair housing enforcement organizations or as containing large concentrations of protected classes.

Awarding Funding to Most Resource-Poor Applicant

In the preamble of the proposed rule, the Department specifically solicited public comment on whether it should award FHIP funds to the applicant that is most resource-poor when choosing between two otherwise equally deserving applicants. The Department received three public comments on this issue. All three commenters objected to using the ''resource-poor'' factor to award funding in the event of a tie between two applicants.

Two commenters stated that a QFHO or FHO may have solid funding for particular activities, but the specific activity for which it seeks FHIP funds may be one that its local funder will not support. These commenters also suggested that HUD's objective should not be to distribute the funds in the most efficient manner, but rather in a manner that will have the greatest impact on fair housing enforcement.

Another commenter supported funding resource-poor organizations, but felt that funding for more substantial organizations was more critical.

Department's response: The Department will provide for tie-breaking criteria in individual NOFAs, and in that way, it will be able to use a variety of factors, such as the term of the proposed activities and the amount of funding requested, as appropriate in the context of the priorities identified for a particular funding round.

Distribution of FHIP Funds According to an Allocation Formula

One comment in response to the ANPR suggested that HUD fund FHIP as a noncompetitive, entitlement category to provide general operating funds. In the proposed rule, HUD responded that with the present level of FHIP funding, entitlement funding would not be an efficient method of implementing FHIP. However, HUD stated that it might consider such an approach in the future, depending upon the amount of future appropriations, and the number of QFHOs. HUD also requested public comment on the issue of distributing FHIP funds according to an allocation formula, and on what criteria might be used to provide for the fair and equitable distribution of funds on such a basis.

The Department received three comments from the public on this issue. One commenter recommended that FHIP funding should be an entitlement program, and that HUD should give preference to fair housing groups which have been in existence for more than 5 years, with a history of litigation.

Two commenters supported the concept of FHIP as an entitlement program, and offered to work with HUD in developing an equitable formula. However, no criteria for distribution were suggested.

Department's response: Although the comments received on this issue favored a formula distribution, the lack of suggestions for specific distribution criteria, and the continuing limiting factor of the amounts made available for funding require that funding continue on a competitive basis.

Miscellaneous Comments

One commenter with six concurring commenters suggested that HUD adopt the following as part of the final rule: (1) The Department should provide an administrative procedure for members of the public to file complaints against fair housing organizations that engage in questionable practices, and if an ALJ determines that the litigation is baseless, then HUD should deny further FHIP funding to the offending fair housing group for 5 years from the date of the ALJ's determination; (2) HUD should require that each fair housing organization submit its entire budget to HUD to ensure that FHIP funds do not constitute more than 50% of its total budget pursuant to section 125.502(c)(1); (3) Fair housing groups should have the same monetary award limitations as HUD has: $10,000 for the first offense, $25,000 for the second offense, and $50,000 for the third offense; and (4) HUD should require that each fair housing organization file a detailed report with HUD on the disbursements of any settlement award, and that this report be available for public inspection.

Department's response: (1) Aggrieved parties may call HUD's attention to misconduct on the part of its grantees at any time. However, as a general rule, the Department will not act on any matter which involves a pending action before a court or other tribunal. Because of the broad range of possible findings, the Department does not consider a funding ban for any fixed term an appropriate remedy to be set in a rule. In reviewing applications, the Department currently considers an applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management of past and current FHIP or other civil rights projects. Any past misconduct by an applicant is taken into account during this review.

(2) The Department's FHIP NOFAs currently require applicants to submit an operating budget that describes the applicant's total planned expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought. This is required so that the 50% budget determination pursuant to proposed section 125.502(c)(1) may be made. To memorialize this requirement under a rule is not necessary.

(3) Because the authorizing statute does not set monetary award limitations on fair housing groups, HUD will not

impose them administratively without a clear mandate to do so.

(4) The laws under which non-profits are organized require them to file annual reports, including financial information, which is a matter of public record. Beyond this extent, the Department will not require additional disclosure.

One commenter suggested that all privately enforced Fair Housing Act actions be reviewed by the Attorney General through use of a similar declaration process as in qui tam litigation. This commenter further suggested some sort of governmental review/approval of FHIP-funded litigation counsel and regulatory control/cap for FHIP-funded legal fees. In addition, the commenter suggested that the final rule address HUD's own liability for frivolous lawsuits brought by private litigants under Rule 11 of the Federal Rules of Civil Procedure, and contain regulatory protection of proprietary information disclosed with the expectation of confidence during the litigation process.

Department's response: Review by the Attorney General through use of a declaration process is beyond the scope of the Department's rulemaking and would have to be pursued through a legislative amendment. The Department is not liable under Rule 11 of the Federal Rules of Civil Procedure for lawsuits brought by private litigants. Protection of proprietary information should be pursued under the rules of the forum in which an action is brought, and the Department declines to address this issue in its rule.

One commenter supported the continued eligibility of real estate organizations to receive educational and outreach funds, but urged HUD to make real estate organizations eligible in their own right to receive FHIP Educational and Outreach funds. The commenter stated that real estate organizations do carry out programs to prevent and eliminate discriminatory housing practices. The commenter also asserted that real estate organizations provide essential education to both real estate professionals and the public on fair housing rights and responsibilities, and are in the unique position of having direct contact with members of the public at the time of sale, lease or purchase.

Department's response: Real estate organizations are eligible to receive educational and outreach funds, in accordance with section 905, as ''public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices''. Section 905 recognized the value of real estate organizations in continuing educational efforts to increase understanding by the public of their fair housing rights and responsibilities, and the Department agrees.

Finally, one commenter recommended that FHIP place emphasis on enforcement over education; that FHIP deadlines should be reasonable (90 days to apply and staggered for each Initiative); that NOFA criteria should be more explicit; and that non-funded proposals should be given feedback.

Department's response: Because of the way the FHIP program is organized, it does place more emphasis on enforcement over education. Three of the Initiatives basically fund enforcement activities; only the Education and Outreach Initiative funds strictly educational activities. Issues as to deadlines and criteria are addressed in NOFAs, in which the Department makes every effort to assure the efficient and equitable distribution of funds. Feedback on proposals is a Departmental administrative issue that is outside the scope of this rule. Such a service is heavily dependent on the availability of resources to the Department.

III. Reinvention of the FHIP Final Rule

As mentioned in the discussion of the comments on the proposed rule, the Department is taking advantage of the publication of this final rule to streamline the FHIP rule in accordance with its overall effort to reinvent regulations. Rather than amending individual sections within part 125, the entire part has been re-drafted to eliminate extraneous material such as language that only repeats the statutory language, or provisions that are only advisory (rather than binding) or non-exclusive, such as lists of suggested activities. The rule is not substantively changed beyond those issues addressed in the proposed rule and in response to the comments submitted on the proposed rule. The result sought is a program that will be more responsive and administratively flexible to address the needs recognized in the authorizing statute.

IV. Technical Correction to Part 103

Presently, 24 CFR 103.405(b)(3) makes reference to actions that are to be taken ''in accordance with 24 CFR 104.40''. There is no such section, and the correct reference should be to 24 CFR 104.410(a). The correction is made in this final rule.

V. Findings and Certifications

Regulatory Planning and Review.

This rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Environmental Review.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on Small Entities.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The purpose of the rule is to provide funding for fair housing investigation and enforcement, and education and outreach activities.

Federalism Impact.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The rule is limited to implementing statutorily required revisions to the existing Fair Housing Initiatives Program Regulation.

Impact on the Family.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule has potential for a beneficial, although indirect, impact on family formation, maintenance, and general well-being. By promoting the values of fair housing, the rule would benefit families by seeking to end discrimination as a factor in the availability of housing. Accordingly,

since the impact on the family is beneficial, although indirect, no further review is considered necessary.

List of Subjects

24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 125

Fair housing, Grant programs—housing and community development, Reporting and recordkeeping requirements.

The Catalog of Federal Domestic Assistance Numbers for the Fair Housing Initiatives Program are 14.408, 14.409, 14.410 and 14.413.

Accordingly, the Department amends parts 103 and 125 of title 24 of the Code of Federal Regulations as follows:

PART 103—FAIR HOUSING-COMPLAINT PROCESSING

1. The authority citation for part 103 continues to read as follows:

Authority: 42 U.S.C. 3601–3619; 42 U.S.C. 3535(d).

2. In § 103.405, paragraph (b)(3) is revised to read as follows:

§ 103.405 Issuance of charge.

* * * * *

(b) * * *

(3) Serve the charge and notifications in accordance with 24 CFR 104.410(a); and

* * * * *

3. Part 125 is revised to read as follows:

PART 125—FAIR HOUSING INITIATIVES PROGRAM

Sec.

Authority: 42 U.S.C. 3616 note; 42 U.S.C. 3535(d).

§ 125.103 Definitions.

In addition to the definitions that appear at section 802 of title VIII (42 U.S.C. 3602), the following definitions apply to this part:

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity in the Department of Housing and Urban Development.

Department means the Department of Housing and Urban Development (HUD).

Expert witness means a person who testifies, or who would have testified but for a resolution of the case before a verdict is entered, and who qualifies as an expert witness under the rules of the court where the litigation funded by this part is brought.

Fair housing enforcement organization (FHO) means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Upon the receipt of FHIP funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

The Department may request an organization to submit documentation to support its claimed status as an FHO.

FHIP means the Fair Housing Initiatives Program authorized by section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note).

Meritorious claims means enforcement activities by an organization that resulted in lawsuits, consent decrees, legal settlements, HUD and/or substantially equivalent agency (under 24 CFR 115.6) conciliations and organization initiated settlements with the outcome of monetary awards for compensatory and/or punitive damages to plaintiffs or complaining parties, or other affirmative relief, including the provision of housing.

Qualified fair housing enforcement organization (QFHO) means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance.

For the purpose of meeting the 2-year qualification period for the activities included in paragraph (2) of this definition, it is not necessary that the activities were conducted simultaneously, as long as each activity was conducted for 2 years. It is also not necessary for the activities to have been conducted for 2 consecutive or continuous years. An organization may aggregate its experience in each activity over the 3 year period preceding its application to meet the 2-year qualification period requirement.

The Department may request an organization to submit documentation to support its claimed status as a QFHO.

Title VIII means title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3600–3620), commonly cited as the Fair Housing Act.

§ 125.104 Program administration.

(a) FHIP is administered by the Assistant Secretary.

(b) FHIP funding is made available under the following initiatives:

(1) The Administrative Enforcement Initiative;

(2) The Education and Outreach Initiative;

(3) The Private Enforcement Initiative; and

(4) The Fair Housing Organizations Initiative.

(c) FHIP funding is made available in accordance with the requirements of the authorizing statute (42 U.S.C. 3616 note), the regulation in this part, and Notices of Funding Availability (NOFAs), and is awarded through a grant or other funding instrument.

(d) Notices of Funding Availability under this program will be published periodically in the Federal Register. Such notices will announce amounts available for award, eligible applicants, and eligible activities, and may limit funding to one or more of the Initiatives. Notices of Funding Availability will include the specific selection criteria for awards, and will indicate the relative weight of each criterion. The selection criteria announced in Notices of Funding Availability will be designed to permit the Department to target and respond to areas of concern, and to promote the purposes of the FHIP in an equitable and cost efficient manner.

(e) All recipients of FHIP funds must conform to reporting and record maintenance requirements determined appropriate by the Assistant Secretary. Each funding instrument will include provisions under which the Department may suspend, terminate or recapture

funds if the recipient does not conform to these requirements.

(f) Recipients of FHIP funds may not use such funds for the payment of expenses in connection with litigation against the United States.

(g) All recipients of funds under this program must conduct audits in accordance with part 44 or part 45, as appropriate, of this title.

§ 125.105 Application requirements.

Each application for funding under the FHIP must contain the following information, which will be assessed against the specific selection criteria set forth in a Notice of Funding Availability.

(a) A description of the practice (or practices) that has affected adversely the achievement of the goal of fair housing, and that will be addressed by the applicant's proposed activities.

(b) A description of the specific activities proposed to be conducted with FHIP funds including the final product(s) and/or any reports to be produced; the cost of each activity proposed; and a schedule for completion of the proposed activities.

(c) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

(d) An estimate of public or private resources that may be available to assist the proposed activities.

(e) A description of the procedures to be used for monitoring conduct and assessing results of the proposed activities.

(f) A description of the benefits that successful completion of the project will produce to enhance fair housing, and the indicators by which these benefits are to be measured.

(g) A description of the expected long term viability of project results.

(h) Any additional information that may be required by a Notice of Funding Availability published in the Federal Register.

(Approved by the Office of Management and Budget under control number 2529–0033. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.)

§ 125.106 Waivers.

Upon determination of good cause, the Assistant Secretary may waive, in a published Notice of Funding Availability or other Federal Register notice, any requirement in this part that is not required by statute.

§ 125.107 Testers.

The following requirements apply to testing activities funded under the FHIP:

(a) Testers must not have prior felony convictions or convictions of crimes involving fraud or perjury.

(b) Testers must receive training or be experienced in testing procedures and techniques.

(c) Testers and the organizations conducting tests, and the employees and agents of these organizations may not:

(1) Have an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury;

(2) Be a relative of any party in a case;

(3) Have had any employment or other affiliation, within one year, with the person or organization to be tested; or

(4) Be a licensed competitor of the person or organization to be tested in the listing, rental, sale, or financing of real estate.

§ 125.201 Administrative Enforcement Initiative.

The Administrative Enforcement Initiative provides funding to State and local fair housing agencies administering fair housing laws recognized by the Assistant Secretary under § 115.6 of this subchapter as providing rights and remedies which are substantially equivalent to those provided in title VIII.

§ 125.301 Education and Outreach Initiative.

(a) The Education and Outreach Initiative provides funding for the purpose of developing, implementing, carrying out, or coordinating education and outreach programs designed to inform members of the public concerning their rights and obligations under the provisions of fair housing laws.

(b) Notices of Funding Availability published for the FHIP may divide Education and Outreach Initiative funding into separate competitions for each of the separate types of programs (i.e., national, regional and/or local, community-based) eligible under this Initiative.

(c) National program applications, including those for Fair Housing Month funding, may be eligible to receive, as provided for in Notices of Funding Availability published in the Federal Register, a preference consisting of additional points if they:

(1) Demonstrate cooperation with real estate industry organizations; and/or

(2) Provide for the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Amendments Act of 1988.

(d) Activities that are regional are activities that are implemented in adjoining States or two or more units of general local government within a state. Activities that are local are activities whose implementation is limited to a single unit of general local government, meaning a city, town, township, county, parish, village, or other general purpose political subdivision of a State. Activities that are community-based in scope are those which are primarily focused on a particular neighborhood area within a unit of general local government.

(e) Each non-governmental recipient of regional, local, or community-based funding for activities located within the jurisdiction of a State or local enforcement agency or agencies administering a substantially equivalent (under part 115 of this subchapter) fair housing law must consult with the agency or agencies to coordinate activities funded under FHIP.

§ 125.401 Private Enforcement Initiative.

(a) The Private Enforcement Initiative provides funding on a single-year or multi-year basis, to investigate violations and obtain enforcement of the rights granted under the Fair Housing Act or State or local laws that provide rights and remedies for discriminatory housing practices that are substantially equivalent to the rights and remedies provided in the Fair Housing Act. Multi-year funding may be contingent upon annual performance reviews and annual appropriations.

(b) Organizations that are eligible to receive assistance under the Private Enforcement Initiative are:

(1) Qualified fair housing enforcement organizations.

(2) Fair housing enforcement organizations with at least 1 year of experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims. For the purpose of meeting this 1 year qualification period, it is not necessary that the activities were conducted simultaneously, as long as each activity was conducted for 1 year. It is also not necessary for the activities to have been conducted for a continuous year. An organization may aggregate its experience in each activity over the 2-year period preceding its application to meet this 1 year qualification period requirement.

§ 125.501 Fair Housing Organizations Initiative.

(a) The Fair Housing Organizations Initiative of the FHIP provides funding to develop or expand the ability of existing eligible organizations to

provide fair housing enforcement, and to establish, on a single-year or multi-year basis contingent upon annual performance reviews and annual appropriations, new fair housing enforcement organizations.

(b) *Continued development of existing organizations.*

(1) *Eligible applicants.* Eligible for funding under this component of the Fair Housing Organizations Initiative are:

(i) Qualified fair housing enforcement organizations;

(ii) Fair housing enforcement organizations; and

(iii) Nonprofit groups organizing to build their capacity to provide fair housing enforcement.

(2) *Operating budget limitation.* (i) Funding under this component of the Fair Housing Organizations Initiative may not be used to provide more than 50 percent of the operating budget of a recipient organization for any one year.

(ii) For purposes of the limitation in this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought.

(c) *Establishing new organizations.*

(1) *Eligible applicants.* Eligible for funding under this component of the Fair Housing Organizations Initiative are:

(i) Qualified fair housing enforcement organizations;

(ii) Fair housing enforcement organizations; and

(iii) Organizations with at least three years of experience in complaint intake, complaint investigation, and enforcement of meritorious claims involving the use of testing evidence.

(2) *Targeted areas.* FHIP Notices of Funding Availability may identify target areas of the country that may receive priority for funding under this component of the Fair Housing Organizations Initiative. An applicant may also seek funding to establish a new organization in a locality not identified as a target area, but in such a case, the applicant must submit sufficient evidence to establish the proposed area as being currently underserved by fair housing enforcement organizations or as containing large concentrations of protected classes.

Dated: August 17, 1995.

Elizabeth K. Julian,

Acting Deputy, Assistant Secretary for Policy and Initiatives, Fair Housing and Equal Opportunity.

[FR Doc. 95–28746 Filed 11–24–95; 8:45 am]

BILLING CODE 4210–28–P

Federal Register

Monday
November 27, 1995

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 15

Testimony, Production, and Disclosure of Material or Information by HUD Employees; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 15

[Docket No. FR–3949–F–01]

RIN 2501–AC03

Testimony, Production, and Disclosure of Material or Information by HUD Employees

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations regarding the testimony and production of information by HUD employees. This rule will include former HUD employees within the scope of these regulations. The amendment is necessary in order to correct the inadvertent exclusion of former employees from coverage under the regulations.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: George Weidenfeller, Deputy General Counsel for Operations, Department of Housing and Urban Development, 451 7th St., SW, Room 10240, Washington, DC 20410; telephone (202) 708–2864, TDD (202) 708–3259. These numbers are not toll-free.

SUPPLEMENTARY INFORMATION: HUD's regulations for the disclosure of information and production of material in its possession or acquired by employees as a part of the performance of their official duties or because of their official status are contained in 24 CFR part 15. These regulations address the terms on which HUD employees may testify, describing the situations in which the Secretary will permit the testimony of HUD employees in judicial, quasi-judicial, and legislative proceedings. The regulations also prohibit, subject to waiver by the Secretary, any employee from being called, by any party other than the United States, as an expert or opinion witness as to matters related to the employee's duties or the functions of HUD.

HUD employees may acquire certain sensitive information or documentation through the course of their employment at HUD, and HUD expects such information and documentation to be covered by its testimony approval regulations in part 15. However, on April 15, 1987, in an attempt to streamline these regulations, HUD published a final rule in the Federal Register that removed the references to former HUD employees (52 FR 12159). HUD did not intend this change to exclude former employees from coverage; rather HUD expected that the Standards of Conduct regulations covered the testimony and production of information by former HUD employees. As the Standard of Conduct regulations do not cover this area, this rule amends subparts H and I of part 15 to reinsert the coverage of former employees. This rule also brings HUD's regulations back into general conformity with the regulations of several other Federal agencies, such as the Departments of Justice, Education, and Transportation (see 28 CFR part 16, 34 CFR part 8, and 49 CFR part 9, respectively).

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions from that general rule when the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1) The subject matter of this final rule involves HUD's internal practices and procedures. Therefore, HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities, since its effect is limited to details of agency procedure.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, this rule relates only to internal administrative procedures which are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule relates to internal procedures regarding former employees and does not affect Federalism issues. As a result, this rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have the potential for significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 15 is amended as follows:

PART 15—TESTIMONY, PRODUCTION AND DISCLOSURE OF MATERIAL OR INFORMATION BY HUD EMPLOYEES

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

Authority: 5 U.S.C. 552; Freedom of Information Reform Act of 1986 (Pub. L. 99–570); 42 U.S.C. 3535(d).

2. Section 15.71 is amended by revising the second sentence to read as follows:

§ 15.71 Purpose and scope.

* * * For purposes of this subpart, the term *employee of the Department* includes current and former officers and employees of the United States

appointed by or subject to the supervision of the Secretary, but does not include officers and employees covered by part 2004 of this title.* * *

3. Section 15.81 is amended by revising paragraph (b) to read as follows:

§ 15.81 Purpose.

* * * * *

(b) For purposes of this subpart, the term *employee of the Department* includes current and former officers and employees of the United States appointed by or subject to the supervision of the Secretary, but does not include officers and employees covered by part 2004 of this title.

Dated: September 8, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–28748 Filed 11–24–95; 8:45 am]

BILLING CODE 4210–28–P

Federal Register

Monday
November 27, 1995

Part V

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council meeting will be held on Tuesday, December 12 and Wednesday, December 13, 1995 from 9:00 a.m. until 4:30 p.m. Eastern Time.

ADDRESSES: The NII Advisory Council meeting will take place at the National Education Association, 1201 16th Street, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Lyle, Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

SUPPLEMENTARY INFORMATION:

Agenda

December 12

9:00 a.m.—Review of Draft Policy Document

4:00 p.m.—Public Comment

4:30 p.m.—Other Discussion (Legacy Projects, KickStart Outreach Events, Final NIIAC Event, Other Business)

December 13

Continuation of Previous Days' Discussion

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Elizabeth Lyle at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–28811 Filed 11–24–95; 8:45 am]

BILLING CODE 3510–60–P

Federal Register

Monday
November 27, 1995

Part VI

Department of Justice

Office of the Attorney General

28 CFR Part 35

Nondiscrimination on the Basis of Disability in State and Local Government Services; Proposed Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 35

[Order No. 1999–95]

Nondiscrimination on the Basis of Disability in State and Local Government Services

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of Justice regulation implementing Title II of the Americans with Disabilities Act to clarify the requirement for installation of curb ramps at existing pedestrian walkways. The proposal would extend the time period for compliance to January 26, 2000, for curb ramps serving State and local government facilities, transportation, places of public accommodation, other places of employment, and at the residences of individuals with disabilities. It would extend the time period for providing curb ramps at existing pedestrian walkways in other areas until January 26, 2005, and it would require public entities to include a schedule for the implementation of these requirements in their transition plans.

DATES: To be assured of consideration, comments must be in writing and must be received on or before January 26, 1996. Comments that are received after the closing date will be considered to the extent practicable.

ADDRESSES: Comments on this proposed rule should be sent to: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Rulemaking Docket 007, P.O. Box 65485, Washington, DC 20035.

Comments may also be sent to the Civil Rights Division via the Internet. Comments should be addressed to: Comments__ADA@justice.usdoj.gov. If your comment is transmitted in a word processing file, please specify the format. Flat ASCII files are preferred.

Comments submitted to the Department of Justice will be available for inspection in the offices of the Disability Rights Section, 1425 New York Avenue NW., Washington, DC from 9:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays from December 13, 1995, until the Department publishes the rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or magnification devices.

To be included in the record of this rulemaking, comments must include the name and address of the commenter. Commenters who choose to transmit their comments via the Internet should include their name and address in the text of the comment. Electronically transmitted comments that identify the commenter by screen name only will not be included in the record.

FOR FURTHER INFORMATION CONTACT: Janet Blizard, (202) 307–0663. The ADA Information Line, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530, (800) 514–0301 (voice), (800) 514–0383 (TDD). These telephone numbers are toll-free numbers.

SUPPLEMENTARY INFORMATION:

Availability of Accessible Format

Copies of this rule are available in the following accessible formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Disability Rights Section at the telephone numbers listed above. The rule is also available on the Civil Rights Division's electronic bulletin board at (202) 514–6193. This telephone number is not a toll-free number. The rule is also available on the Internet. It can be accessed with gopher client software (gopher.usdoj.gov), through other gopher servers using the University of Minnesota master gopher (under North America, USA, All, Department of Justice), with World Wide Web software (http://www.usdoj.gov), or through the White House WWW server (http://www.whitehouse.gov).

Background

The Department of Justice's (Department) regulation implementing title II of the Americans with Disabilities Act of 1990, Pub. L. 101–336, 42 U.S.C. 12131–12134 (ADA), provides that a public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. 28 CFR 35.149. Under this regulation, maintenance of pedestrian walkways by public entities is a covered program that is required to be made accessible by the installation of curb ramps where pedestrian walkways cross curbs. Because of the unique and significant capital expenses involved in the installation of curb ramps where existing pedestrian routes cross curbs, Senators Bob Dole, Tom Harkin, Orrin Hatch, Edward Kennedy, and John McCain, who were among the principal Senate sponsors of the ADA, have asked the Department to amend the title II regulation to provide additional time for public entities to meet their obligation to provide access to public pedestrian walkways. The Department considers the suggested extension to be a reasonable and appropriate modification and accordingly is issuing this proposed rule.

On July 26, 1991, the Department published its final rule implementing subtitle A of title II of the ADA. 56 FR 35694. This regulation was codified at 28 CFR Part 35. Subtitle A of title II protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all covered public entities. It extends the prohibition of discrimination established by section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, to all activities of State and local governments, including those that do not receive federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability from titles I, III, and V of the ADA.

This proposed rule would revise the program accessibility requirements currently published at 28 CFR 35.150 to incorporate specific guidance with respect to the installation of curb ramps at intersections that are not otherwise being altered. This proposed rule would not affect the requirements of 28 CFR 35.151(e), which requires that if walkways are provided, curb ramps or other sloped areas must be installed at all newly constructed or altered streets, roads, highways, and street-level pedestrian walkways. Thus, the ADA would continue to require that, whenever a State or local government puts in a new street or alters an existing street, it must also construct curb ramps at any intersection that has curbs that bar entry from a pedestrian walkway.

This proposed rule is distinct from the Department's June 20, 1994 (59 FR 31808) proposal to amend 28 CFR 35.151. The Department's June 1994 proposal would adopt, as the ADA Standards for Accessible Design, the ADA Accessibility Guidelines for Buildings and Facilities, revised and published in an interim final rule of the same date by the Architectural and Transportation Barriers Compliance Board (Access Board). Comments on the Department's proposed rule and the Access Board's interim final rule are now being considered. This proposal to amend 28 CFR 35.150 does not affect the Department's June 20, 1994, notice of proposed rulemaking or the Access Board's interim final rule.

Program Accessibility

Title II of the ADA prohibits discrimination on the basis of disability in any of the services, programs, or activities of a covered public entity.

Subpart D of the title II regulation, Program Accessibility, provides that a public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as ''program accessibility,'' applies to all programs operated in existing facilities by a public entity. Public entities, however, are not necessarily required to make each of their existing facilities accessible.

In addition, a public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

Installation of curb ramps to provide access to existing pedestrian walkways on existing streets that are not otherwise being altered may be necessary in order to provide access to the ''program'' of using public streets and walkways. As explained in the preamble to the final title II regulation—

> The legislative history of title II of the ADA makes it clear that, under title II, ''local and state governments are required to provide curb cuts on public streets.'' Education and Labor report at 84. As the rationale for the provision of curb cuts, the House report explains, ''The employment, transportation, and public accommodation sections of * * * [the ADA] would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets.'' Id. Section 35.151(e), which establishes accessibility requirements for new construction and alterations, requires that all newly constructed or altered streets, roads, or highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, and all newly constructed or altered street level pedestrian walkways must have curb ramps or other sloped areas at intersections to streets, roads, or highways. A new paragraph (d)(2) has been added to the final rule to clarify the application of the general requirement for program accessibility to the provision of curb cuts at existing crosswalks. This paragraph requires that the transition plan include a schedule for providing curb ramps or other sloped areas at existing pedestrian walkways, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, public accommodations, and employers, followed by walkways serving other areas. Pedestrian ''walkways'' include locations where access is required for use of public transportation, such as bus stops that are not located at intersections or crosswalks.
>
> 56 FR 35710.

The Department further explained the application of the concept of program accessibility in its Title II Technical Assistance Manual, which advises that:

> Public entities that have responsibility or authority over streets, roads, or walkways must prepare a schedule for providing curb ramps where pedestrian walkways cross curbs. Public entities must give priority to walkways serving State and local government offices and facilities, transportation, places of public accommodation, and employees, followed by walkways serving other areas. This schedule must be included as part of a transition plan. * * *
>
> To promote both efficiency and accessibility, public entities may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb. However, public entities are not necessarily required to construct a curb ramp at every such intersection.
>
> Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of program accessibility in the limited circumstances where individuals with disabilities need only travel a marginally longer route. In addition, the fundamental alteration and undue burdens limitations may limit the number of curb ramps required.
>
> To achieve or maintain program accessibility, it may be appropriate to establish an ongoing procedure for installing curb ramps upon request in areas frequented by individuals with disabilities as residents, employees, or visitors.
>
> Section II–5.3000.

The title II regulation requires public entities to achieve program accessibility by January 26, 1992. Where structural changes to existing facilities are required to provide program accessibility, section 35.150(c) provides that such structural changes must be made as expeditiously as possible, but in no event later than January 26, 1995, unless the public entity can demonstrate that meeting this deadline would result in a fundamental alteration of its program or would impose undue financial and administrative burdens.

This proposed amendment responds to concern expressed by Senators Dole, Harkin, Hatch, Kennedy, and McCain that the requirement to provide program accessibility to existing intersections by installing curb ramps requires structural alterations to a substantial portion of the existing infrastructure of most cities, and imposes an obligation that many jurisdictions were unable to meet by January 26, 1995. After due consideration, the Department has concluded that modification of the regulation to permit additional time for public entities to achieve compliance is appropriate. This proposed rule would therefore revise 28 CFR 35.150(c) to extend to January 26, 2000, the time period for compliance with the requirements for structural alterations to provide curb ramps in pedestrian walkways to provide access to State and local government facilities, transportation, places of public accommodation, other places of employment, and the residences of individuals with disabilities. The proposed rule would extend the deadline for providing access to existing pedestrian walkways in other residential and non-commercial areas to January 26, 2005. It is the Department's hope that this extension will provide the additional flexibility necessary for State and local governments to comply with the ADA in light of strained fiscal resources, and that it will actually increase the number of curb ramps that will be installed on this nation's streets.

The Department seeks comments from State and local governments on the difficulties caused by the present deadline for curb ramps. While anecdotal evidence is useful, the Department would like to receive comprehensive information about the fiscal impact of the curb ramp requirement on the budgets of State and local governments, including the cost of installing curb ramps on existing pedestrian walkways, the number of curb ramps installed, the number of curb ramps that are planned to be added, and the amount of funds used for this requirement, both in terms of gross numbers and percentage of the State or local government budget.

The Department also requests information from people with disabilities and the organizations that represent them on the effect that this proposal will have on their ability to travel in their communities. We would profit from hearing specific, detailed reports, rather than generalized statements.

This proposed rule would require public entities to ensure that providing curb ramps serving the residences of individuals with disabilities shall be given priority over the installation of curb ramps in other residential or non-

commercial areas by requiring the former category of curb ramps to be installed by January 26, 2000. After that date, if a public entity receives a request from an individual with a disability for a curb ramp serving that individual's residence, installing a curb ramp in response to that request should take precedence over the installation of other curb ramps serving residential or non-commercial areas.

It has been suggested that this proposed rule should require public entities to establish a formal process through which individuals with disabilities may request the installation of curb ramps at pedestrian walkways serving their residences, and should further require that curb ramps requested through this process be installed within one year of the request. This would represent a significant change from the Department's current policy, which recommends, but does not require, the development of a request procedure, and does not require the installation of curb ramps at the residences of individuals with disabilities to be given priority over the installation of curb ramps serving public and commercial facilities.

The Department recognizes that it may be beneficial to individuals with disabilities to be assured that they will be able to have curb ramps installed in the public pedestrian routes serving their residences. However, the Department is concerned, given the limitations on available public funds, that the imposition of a requirement to provide curb ramps at private residences within a year of a request may inhibit the ability of a public entity to give priority to installing curb ramps on more heavily traveled routes serving public and commercial facilities.

The Department is specifically seeking public comment on this issue to assist us in determining whether the installation of curb ramps at private residences should be given priority over the installation of curb ramps in public and commercial areas. The Department also invites recommendations about ways in which such a process could be implemented fairly and efficiently.

Concern has been expressed about the possible effect of this rule on the usability of transportation systems because bus stops may lack curb ramps for a longer period of time. It is feared that a lack of accessible municipal bus stops may defeat transportation providers' efforts to make their systems accessible. The Department is specifically seeking comments regarding the impact of this rule on such systems and suggestions regarding how to address that impact.

Finally, the proposed rule requires public entities with 50 or more employees that choose to take advantage of this extension of time to amend their transition plans to establish specific schedules for providing access to public pedestrian walkways in compliance with the deadlines established by this proposed rule.

This proposed rule, while extending the deadline for constructing curb ramps necessary to provide program access, expressly provides that access to pedestrian walkways shall be provided as expeditiously as possible. By requiring public entities that take advantage of the new deadlines to develop a transition plan with a specific compliance schedule, the Department anticipates that public entities will not use the extension as a means of delaying compliance, but will view their obligation to provide access to public pedestrian walkways as an ongoing process that will result in a steady improvement in the accessibility of public pedestrian routes.

In developing a revised transition plan, public entities must comply with 28 CFR 35.150(d)(1), which requires public entities to provide an opportunity for interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. Public entities should be aware that individuals with disabilities who rely on curb ramps to enable them to use the public walkways may provide valuable insight on the accessibility of public programs, activities, and services. For example, individuals with mobility impairments may be the best source of information about locations where existing curbs constitute significant barriers to their use of public streets and pedestrian walkways.

Regulatory Process Matters

This proposed rule has been drafted in accordance with the principles of Executive Order 12866. The Department has determined that it is a significant regulatory action. Accordingly, it has been reviewed and approved by the Office of Management and Budget.

Executive Order 12875 prohibits executive departments and agencies from promulgating any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless certain conditions are met. This proposed rule creates no new mandates. Consistent with the spirit of Executive Order 12875, this regulation modifies an existing regulatory requirement to provide flexibility to covered public entities in meeting their obligations under title II of the ADA.

The Department has also determined that this proposed rule would not have a significant economic impact on a substantial number of small entities because it imposes no new obligations. Instead, it provides greater flexibility in the implementation of requirements now established in 28 CFR 35.150. Therefore, it is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601–611.

The transition plan required by this proposed rule is an information collection that is subject to the Paperwork Reduction Act and the regulations established by the Office of Management and Budget in 5 CFR part 1320. Therefore, the Department has submitted this proposed information collection to the Office of Management and Budget for its review and approval.

List of Subjects in 28 CFR Part 35

Administrative practice and procedure, Buildings and facilities, Civil rights, Communications equipment, Individuals with disabilities, Reporting and recordkeeping requirements, State and local governments.

Accordingly, Part 35 of Chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

1. The authority citation for 28 CFR Part 35 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; Title II, Pub. L. 101–336 (42 U.S.C. 12134).

2. In § 35.150, paragraphs (c) and (d)(2) are revised to read as follows:

§ 35.150 Existing facilities.

* * * * *

(c) *Time period for compliance.* (1) Except as provided in paragraph (c)(2) of this section, where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made no later than January 26, 1995, but in any event as expeditiously as possible.

(2)(i) A public entity shall comply with the obligations of this section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at locations serving State and local government offices and facilities, transportation, places of public accommodation, employers, and the residences of individuals with

disabilities no later than January 26, 2000, but in any event as expeditiously as possible.

(ii) A public entity shall comply with the obligations of this section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at areas not subject to paragraph (c)(2)(i) of this section no later than January 26, 2005, but in any event as expeditiously as possible.

(d) * * *

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a specific schedule for the installation of curb ramps or other sloped areas where pedestrian walkways cross curbs that complies with the requirements of paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

* * * * *

Dated: November 10, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–28679 Filed 11–24–95; 8:45 am]

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Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 12

Seizure and Forfeiture Procedures; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 12

RIN 1018–AC89

Seizure and Forfeiture Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to revise its seizure and forfeiture procedures. These regulations will establish procedures relating to property seized or subject to administrative forfeiture under various laws enforced by the Service. This amendment is intended to provide uniform guidance for the bonded release, appraisement, administrative proceeding, petition for remission, and disposal of items subject to forfeiture under laws administered by the Service.

This amendment of the Service's seizure and forfeiture procedures is also intended to more clearly explain the procedures used in administrative forfeiture proceedings and to make the process more efficient and provide for greater consistency of the Service's seizure and forfeiture procedures with those of the U.S. Customs Service.

DATES: Comments must be submitted on or before January 26, 1996.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, u.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank S. Shoemaker Jr., Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, telephone (703) 358–1949.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) has oversight responsibilities under Federal wildlife conservation statutory and regulatory authorities to provide uniform rules, conditions, and procedures for the seizure and forfeiture of property. The regulations in 50 CFR 12, establish procedures relating to property seized or subject to forfeiture under various laws enforced by the Service.

Forfeiture may be defined as ''the divestiture without compensation of property used in a manner contrary to the laws of the sovereign''. Forfeiture as a form of legal action has been enlarged by case law to include the divestiture of property acquired in an illegal manner. The mere fact, however, that property has been used or acquired illegally will not automatically provide the government with the authority to confiscate and condemn it. Property may be forfeited only when such forfeiture is specifically authorized by statute. Federal administrative forfeiture, as a particular class of forfeiture action, is the process by which property may be forfeited to the United States by the Federal agency that seized it in accordance with proscribed administrative procedures. This class of forfeiture will, therefore, take place in the absence of ordinary judicial procedure. For such non-judicial divestiture to occur, it must be specifically permitted by statute. The statutory language authorizing administrative forfeiture has been codified within the Customs laws at Title 19, United States Code § 1602–21.

The Service, in accordance with its oversight responsibility is proposing the following changes to 50 CFR 12, in order to update and revise its procedures to provide greater uniformity with the procedures used by the U.S. Customs Service. Section 12.2 entitled, Scope of Regulations, sets forth the statutory authority under which the Service is empowered to seize and administratively forfeit property. This section is being updated to delete outdated references to legal authorities and to include several additional legal authorities which are administered by the Service. Specifically, changes have been made to Section 12.2 to: eliminate the outdated reference to The Black Bass Act which was incorporated into the Lacey Act in 1981; add the African Elephant Conservation Act, 16 U.S.C. 4201 *et seq*; and add the Wild Exotic Bird Conservation Act, 16 U.S.C. 4901 *et seq*. These statutes which have been newly referenced in this section all contain administrative forfeiture provisions.

Section 12.3, entitled Definitions, is being revised to include within the existing definition of disposal at 12.3(a)(2), the authorized disposal of seized wildlife items by transferring them to the Fish and Wildlife Service National Forfeited and Abandoned Wildlife Repository (National Repository).

Additional changes to Part 12.3 include the revision of the definition of the word ''Solicitor.'' This definition is being revised to include ''any person designated by the Solicitor to initiate and prosecute a civil penalty or administrative forfeiture proceeding''. This change is intended to prevent any confusion by the public as to who is authorized to act in forfeiture or civil penalty proceedings.

Section 12.5, entitled Seizure by other agencies, is being revised to indicate the current titles of responsible Service officials, the ''Assistant Regional Director—Law Enforcement''. The Assistant Regional Director—Law Enforcement being duly authorized to receive property seized by other agencies under laws administered by the Service. This change will be in keeping with the 1988 revision in 50 CFR Part 10.22 which references the Assistant Regional Director.

Section 12.6, entitled Bonded release, describes the process and requirements for the Service's acceptance of a bond for the release of seized property. The Service in the past has generally used this procedure in special cases such as when live wildlife requires specialized care or when property is liable to perish or become greatly reduced in price or value in storage. Additional text has been added to this section to require the monetary value of seized items to be established as of the time and place of release. The rationale for such a change is the Service's concern that in many importations of wildlife or wildlife products, the actual value of items declared by the importer are ordinarily understated. This undervaluation is often associated with foreign invoice values made on Customs declarations which do not realistically reflect actual domestic market values. When the Service accepts a bond based solely upon foreign or declared value and the goods are returned to the claimant, there can be an unintended incentive for the claimant to sell the goods at the higher domestic market value and forfeit the bond. The text of Section 12.6 has been revised to allow the Service the discretion to specify in what form, cash, check, or certified bank check, a bond may be posted. This change is due in large part to the many comments received from Service employees expressing concern about the difficulty encountered in the liquidation of posted surety bonds or other security instruments, where the bond has been forfeited by the claimant but the necessary preconditions for the bonds liquidation have not been satisfied.

The requirements of the ''appraisement'' Section 12.12 have also been revised. This section provides guidance for the determination of value of both saleable and unsalable property seized by the Service. Section 12.12 has been revised to provide the Service with an additional method of determining the

market value of items, that can have no legitimate or lawful value because they are in fact illegal to possess in virtually all circumstances. This section has therefore been revised to allow for ''other reasonable means'' to be used when determining value of seized property.

The appraisement section is also revised by the elimination of the list of applicable statutes and by the addition of the statement; ''any statute administered by the Service''. This change will eliminate the redundant listing of laws administered by the Service. Similar changes have been made to Sections 12.22, 12.23(a) and 12.24(a).

Several administrative changes have been made to § 12.22, entitled, Civil actions to obtain forfeiture. This section outlines the Service's authority to initiate civil actions to obtain forfeiture of property seized under any statutory authority administered by the Service. Although this course of action is generally not preferred by the Service, several statutes expressly require the initiation of civil actions for the forfeiture of property. Section 12.22 has, therefore, been revised to clarify that, ''For the purposes of section 3(a) of the Lacey Act (16 U.S.C. 3372(a)), the importation of a marine mammal or marine mammal product * * * the importation of a migratory bird * * * or the importation of any species of wildlife pursuant to 18 U.S.C. 42, is deemed to be a transportation of wildlife.'' This additional text is added to facilitate forfeiture of wildlife without penalty assessment.

Under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, the Service is required to assess a civil penalty prior to the initiation of forfeiture proceedings involving marine mammals or marine mammal products. In instances of importations made by tourists entering the United States, of marine mammal products in violation of the MMPA, or migratory birds in violation of the Migratory Bird Treaty Act (MBTA), the Service may simply seek forfeiture of the item without the assessment of monetary fine. Products made from endangered species or species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and imported contrary to the provisions of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, are routinely forfeited under those provisions with no prior assessment of a civil penalty. The legislative history of the ESA indicates a Congressional intent to provide for simple forfeiture in cases involving noncommercial tourist. The MMPA allows the Service to accept voluntary abandonment of marine mammal products in noncommercial cases involving tourists. If the importer will not voluntarily abandon the item, however, the Service will then be forced to seek assessment of a civil penalty in order to seek forfeiture.

In order to avoid penalty assessment for these items when not warranted, and initiate administrative forfeiture, the Service frequently uses the Lacey Act, 16 U.S.C. 3372(a). The Lacey Act does not, however, require the prior assessment of a penalty as a prerequisite to forfeiture. Therefore, in order for the Service to remain consistent in cases involving innocent possession and importation of marine mammal products and migratory bird parts, the Service is revising Section 12.22 to clarify forfeiture under the Lacey Act. For this reason the words ''importation is deemed to be a transportation'' are being inserted at the end of Section 12.22. This wording is similar to that used in the Wild Exotic Bird Conservation Act (16 U.S.C. 4912(c)). The intent of these changes is to clarify for the public the process used to forfeit items under the MMPA and the MBTA, and enable the Service to treat similar violations in a similar fashion.

The administrative forfeiture Section at 12.23 has also been revised. This section is intended to: explain the process of administrative forfeiture; describe what a Notice of Proposed Forfeiture should contain; set a maximum value limit on property subject to administrative forfeiture; and explain how and with whom interested parties can file a claim and bond in order to stop the forfeiture proceeding. In revision of this Section, the Service is attempting to eliminate unnecessary paperwork, to minimize the number of certified mailings and publications required, to clarify the forfeiture process, and to bring the regulations up to date with current Customs regulations.

Specific changes to 50 CFR 12.23(a) will raise the upper value limit of property subject to administrative forfeiture from $100,000 to $500,000 to bring Part 12 into uniformity with applicable Customs requirements. The Service is also adding the words ''or without regard to the value of the wildlife, if the importation of the wildlife is prohibited'', to the text of this section. This change is intended to be consistent with current Customs regulations, and is to have the effect of reducing the number of uncontested forfeitures that the Solicitor will need to refer to the United States Department of Justice. The basis for making this change is that under current regulations, all forfeiture actions involving seized property valued at over $100,000 were referred to the Department of Justice even when such importations were specifically prohibited. The burden of preparing forfeiture cases for presentation to the Department of Justice has been substantial. The Service, therefore, is revising this section to reduce the number of referrals in uncontested forfeiture cases.

Section 12.23(b)(1)(A), entitled, Publication is revised to adjust the value of property to which the Service is required to provide notice of forfeiture to the public by newspaper publication. The Service is adjusting the stated value from $1000 to $2500 respectively. This change will allow the Service to post notices of forfeiture at Service enforcement offices, U.S. District courthouses, or U.S. customhouses, for property valued up to $2500. This revision will bring the Service into uniformity with current Customs regulations, reduce the costs generally associated with publication and adjust this limit for changes to the comparable value of money since the last revision of this section.

Several other changes have been made to Section 12 in an effort to bring the Service's requirements into uniformity with current Customs regulations and to improve and clarify the notification process. The Service will no longer require that a notice of proposed forfeiture be made in the same form as a Federal Judicial complaint. The Service is also adding additional text to the section stating that ''articles included in two or more seizures may be advertised as one unit''. This change will allow the Service to use ''one unit'' advertising and will thereby reduce the number of advertisements needed to provide notice of proposed forfeiture for items of relatively minimal value. This change is expected to result in a significant cost saving for the Service in both advertising expenses and in costs associated with the issuance of multiple notices of proposed forfeiture.

Other changes to section 12.23(b)(1)(B) have been made to clarify the process by which interested persons may file a petition for remission of forfeiture. Section 12.23(b)(1)(B) has been revised to state that a petition for remission shall be filed with the ''Solicitor's Office'', in accordance with ''and within the time limits set forth in section 12.24.'' This change will assist the public in knowing where, and within what time limits, they may file a petition. Additional wording has also been added to this section to clarify the

affects on claimants for the failure to file a timely claim with cost bond.

The Service is also revising its procedures to provide a single Notice of Proposed Forfeiture. Upon notice interested parties may respond by filing a claim with cost bond and/or a petition for remission within the required time limits. A potential claimant may, therefore, either stop the forfeiture proceeding by filing a petition or claim and bond, or allow the forfeiture to occur automatically by not responding. It should be noted, that in most forfeiture actions undertaken by the Service, the forfeitures are contested. The Service for this reason is interested in abolishing the redundant ''Declaration of Forfeiture'' notice currently required under section 12.23(c). The Service is proposing to use a single Notice of Proposed Forfeiture procedure which can result in automatic forfeiture if a claim or a petition for remission have not been filed within the appropriate time. In addition, as is the current practice, a Declaration of Forfeiture would not be issued. The Service is revising the contents of the notice of proposed forfeiture, as well as the text of the summary forfeiture section as follows: ''The notice shall further provide that if the claim and costs bond are not timely received, that all claimants are deemed to admit the truth of the allegations of the notice and the property is summarily forfeited to the United States''.

The Service is also making changes to Section 12.23(b)(2). This section outlines the requirements of filing a claim and bond by persons claiming rights to property seized by the Service. This section has been incorrectly interpreted by many individuals to pertain only to ''bonds'' as financial instruments. The Service, therefore, proposes to revise this section by deleting the word ''bond'', and by replacing it with the words ''non-refundable certified or bank check made payable to Clerk, United States District Court.'' This new wording will also clarify for the public the essential ''non-refundable'' nature of such certified or bank check. A bond in generally required in order to provide for the payment of costs, and is therefore nonrefundable. The regulations will continue to require a bond in the amount of $5000 or ten per centum of the value of the claimed property, whichever is less, but not less than $250.

A second change to the text of subsection (B)(2) has been made to clarify the regulation and explain the affects of filing a bond for seized property. The addition of the words ''Such filing only stops the summary forfeiture proceeding'', is intended to emphasize that the mere filing of a bond will not ordinarily entitle the claimant or other person to possession of the property. This additional text will also provide conformity with current applicable Customs requirements.

The Service is revising Section 12.23(b)(4), entitled, Motion for Stay, in order to clarify the intent of its requirements. In certain instances forfeiture claimants, who are the subjects of ongoing criminal investigations, or criminal charges, have attempted to use the broad range of civil discovery to obtain information about the Service's criminal investigation. Use of civil discovery in this fashion has allowed individuals access to information they would not otherwise be entitled to receive. A Motion for Stay is considered a necessary addition to Part 12, however, in order to provide for circumstances in which a claimant defending a forfeiture action might be forced to make statements against their interest, which could eventually be used against them if they were also charged criminally for the same violation. In general, the United States Attorneys are generally cognizant of this issue and such forfeiture actions are often purposefully delayed pending resolution of the underlying criminal case. Since the existing text of the regulation does not indicate that a Motion for Stay is limited in the circumstances of its use, claimant's attorneys have often filed, or sought to file, such motions. Therefore, in order to more clearly explain the purpose of such motions, the additional words, ''A Motion for Stay will be considered only if the owners of the property are also charged with a criminal violation based upon the same illegal act'', have been added to the beginning of this section for clarification. The effect of this revision is to reduce the number of inappropriate motions filed, and ensure compliance with Rule 26 of the Federal Rules of Criminal Procedure.

The existing text to Section 12.23(c) entitled, Summary Forfeiture, has been substantially revised. This provision provided for the issuance of a written declaration of forfeiture and specifies the contents of such declarations. These requirements have been substantially eliminated. The proposed new text of this section is intended to be consistent with the changes being made in Section 12.23(b)(1)(B) and is made on the same basis. The Service is thereby eliminating the current practice of issuing a Service Declaration of Forfeiture, in favor of ''automatic forfeiture'', when a claim and bond have not been filed. To effect this change a new Section 12.23(c), entitled, ''Institution of forfeiture proceedings before completion of other administrative proceedings'', is being added to Part 12. This new section will simply state that ''nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of penalty assessment or remission procedures.'' The basis for this change is that the Service has in the past sought civil penalties prior to forfeiting wildlife products when, for example, products were imported into the United States in violation of the Endangered Species Act. Several judicial decisions have caused the Service to revise its procedures in regards to the length of time the Service may hold property prior to the initiation of forfeiture proceedings, without incurring problems of a Due Process nature. The Service in most cases will generally seek forfeiture before initiating civil penalty proceedings, unless forfeiture proceedings have been delayed or remitted through a filing of a petition or a claim and bond. The Service, therefore, is seeking through this revision, a means of providing for such cases where the institution of forfeiture proceedings is made before the completion of other administrative proceedings. This change is also intended to conform with current Customs procedures.

Section 12.24, entitled, Petition for Remission of Forfeiture, has been revised by the Service. In addition to the elimination of certain redundant statutory citations in paragraph (a), the Service is proposing to modify paragraph 12.24(c). This paragraph currently requires that a petition be signed by the petitioner or the petitioners attorney at law. The Service proposes the addition of the word ''or representative'' after ''attorney at law'' in order to avoid an erroneous interpretation that a petitioner must act alone or through an attorney. The effect of this change will therefore be to clarify for the petitioner, that they may designate a representative, other than an attorney, to act on their behalf.

Changes reflecting the new Disposal definition are proposed at Sections 12.24 (b) and (e). Under paragraph (b), a petition for remission must be received prior to disposal of the property. Paragraph (e) will now require the Solicitor to determine if the property has been disposed of prior to deciding whether or not to grant relief.

The addition of a new section under Subpart C to be designated Section 12.26, and entitled, Summary Sale of Perishable and Other Property, is being proposed by the Service. This section

will allow the Service to sell any live wildlife, plant, or other seized property subject to forfeiture, when such item(s) have been determined likely to perish, deteriorate, decay, or likely to waste, provided that the item(s) seized can otherwise be lawfully sold. The proceeds of such sale will then become the object of the subsequent forfeiture action. The Service is proposing this new section for a variety of reasons based upon its past experience with such live or perishable seizures. Under the current disposal regulation at Section 12.33(c)(1), the Service cannot dispose or sell live or perishable property until such property has been forfeited or abandoned. The Service is currently required to petition a competent United States District Court of competent jurisdiction to allow a summary sale of the perishable items if they are not yet forfeited. This has resulted in substantial delays which in practice defeat the intent of the desired sale. These delays in the disposition of perishable items may also cause substantial storage and handling problems while summary sale or forfeiture is being sought. Attempting to place live wildlife in a suitable facility to prevent the animals (or plants) perishing while awaiting forfeiture has proven to be a difficult task, particularly when dealing with more common species. This task is often made more difficult because such placements may be only temporary in duration, due to the possibility of remission of forfeiture. To risk live wildlife perishing due to the lack of suitable placement while awaiting forfeiture would be inconsistent with the mission of the Service.

In the past the Service has attempted to prioritize administratively the destruction of abandoned property that was either perishable, constituted a health hazard to employees, or posed a threat of contamination to other more valuable seized property. This process is made difficult and time consuming when the property has not be forfeited or abandoned. The Service, therefore, is seeking a means by which perishable items can be sold immediately with the forfeiture action being directed against the proceeds of that sale. The addition of this section under Subpart C will also provide for conformity with Customs regulations, alleviate some of the burden placed upon law enforcement personnel in storing perishable items or finding placement for live wildlife, to minimize the risk of live and sometimes rare wildlife perishing, and to minimize the need for Judicial involvement in requests for summary sale.

Section 12.33 is also revised by the addition of a new paragraph (e). This new paragraph will include, as an accepted method of disposal of forfeited fish, wildlife or plants, the transfer of such wildlife items to the Fish and Wildlife Service, National Forfeited and Abandoned Wildlife Repository. The rationale for this change is to provide a means for the seizing official to address all issues surrounding remission, or return, of the seized item prior to disposal, and for the seizing official or evidence custodian to address issues concerning prior illegality, as outlined in Section 12.32, prior to disposal. An example of a prior illegality is non-compliance with the requirements of a Department of Agriculture quarantine regulation affecting the importation of exotic birds. The Service in making this change, is of the belief that such issues are best left to be addressed by the seizing official. Changes relating to Disposal are also made at Sections 12.24 (b) and (e), as well as in Section 12.33.

In addition to the administrative advantages of this proposed change, as outlined in the prior discussion, the Service is seeking to resolve problems involving requests for remission, and to examine goods long after forfeiture has taken place. Under the current regulation at section 12.24(b) a petition for remission can be filed at any point prior to disposal. Since the National Repository is part of the Service, items transferred there were considered to still be in the possession of the Service and not ''disposed of''. This resulted in the filing of numerous petitions and requests for examination long after the items had been forfeited. The Service believes that the proper time for filing for remission, or dealing with other concerns of the owner, is before items are transferred to the National Repository. The Customs regulations establish a time limit, after which, if no petition for remission or claim and bond are filed, the proceeds of the forfeiture are dispersed. The Service has decided against proposing an arbitrary time limit on the filing of petitions, and instead, decided to make the National Repository a means of disposal in itself. This will alleviate the unnecessary burden of tracking time limits on each forfeited item of property, and ensure that all issues surrounding remission are resolved by the seizing official. The majority of forfeited property being handled by the Division of Law Enforcement is transferred to the National Repository since it was the intent in its establishment to make it the normal repository for such items.

Background

On Thursday, November 14, 1991, (56 FR 57873) the Service published a Notice of Intent to Review 50 CFR Part 12 and requested that all interested parties submit written comments. The Service received comments from a total of 66 individuals and organizations.

Specifically, written comments were received from 36 individuals, 11 representatives of government agencies, 8 sportsman associations, 1 American Indian Tribe, 3 scientific associations, and 7 wildlife management and conservation associations. Only 7 of the comments to a Notice of Intent to Review Parts 12, 13, 14, 20, 21 and 22 pertained to Part 12. The Service has carefully considered all comments received in proposing these changes to Part 12. Public comments submitted in response to the Notice of Intent to Review that were directed at Parts 13, 14, 20, 21 and 22 will be addressed as each individual Part is proposed for revision.

Summary of Comments and Information Received

In general, the comments recommended that the Service provide in its revision of Part 12 additional procedural safeguards in the regulations governing ''Seizure and Forfeiture Procedures''. Additional procedural safeguards were requested for the resolution of disputes in cases involving the identification of specimens seized, for determining when the forfeiture of an appearance bond or other security to the Service is warranted in lieu of seizure, and to set out in the regulations the ''specific notices'' and other required documentation necessary in seizure and forfeiture procedures. Other comments regarding this section ranged from requests to have the section thoroughly reviewed, to the addition of lengthy text pertaining to the detention of property.

Comments Pertaining to 50 CFR 12.6

Bonded Release

Several commenters suggested revising Part 12 to give the Service greater flexibility to require and liquidate performance bonds for the release of seized property. The Service's authority to accept bonded release of wildlife is authorized by the Endangered Species Act. Bonded release pertains to the discretionary release by the Service of wildlife or wildlife products after an importer or owner has produced cash, certified check, or other security to ensure the products return and availability to the Service. Liquidation of the bond may occur if the

conditions of the bond have not been satisfied. The Service recognizes that there have been problems in the liquidation of corporate surety bonds when the preconditions for their release have not been satisfied. The Service has addressed this problem in this revision by specifying within the applicable section, that a cash bond or certified bank check can under certain circumstances be an option available for bonded release.

One commenter noted that an important justification for the use of bonded release was to ensure proper specialized care for scientific specimens. Specialized care is often necessary to maintain scientific specimens and is an important reason for using bonded release. Situations requiring bonded release include cases where there is live wildlife that the Service can not reasonably care for, or other cases involving live falconry birds.

One commenter expressed concern regarding live falconry birds and requested that the Service ensure that such bird be bonded back to the falconer's custody, because as the commenter termed, the falconer can best care for such bird. The Service's regulations already provide for this in Section 12.6(b).

One commenter representing a sportsman's organization expressed concern about possible spoilage or death of wildlife specimens being detained by the Service while taxonomic identification is taking place. The commenter recommended bonded release as a remedy for this problem. The Service agrees that such concerns when legitimate would be valid grounds for the use of bonded release. When contemplating bonded release of an item, several factors are considered by the Service. Generally bonded release will not be allowed in situations where the Service would not have reasonable assurance that the property released is the same property to be returned for forfeiture or other proceeding. In addition bonded release is only allowed when possession of the property by the owner will not violate or frustrate the intended purpose or policy of applicable law or regulation. The release of an item under bond to an importer or owner, for example, is not allowed, when the taxonomic identification of an item is still in question for any release would be a bar to the necessary identification of the item. The Service intends for the provisions governing the bonded release to be narrowly construed. The Service has made efforts to ensure that its requirements for the possession of forfeitable property are adequate to ensure safekeeping and in the best interest of compliance.

One commenter expressed concern over the Service's practice of ''detaining'' wildlife for identification. The commenter specifically admonished the Service for detaining shipments, when accompanying documentation reveals the correct taxon, and the movement of that specimen in commerce would not be illegal. The commenter further characterized such detention to a seizure without warrant. The Service has carefully considered the views of the commenter and disagrees with the prior characterization of the detention of shipments. Service personnel are trained to check declarations and other required documentation to determine when items being declared do not reflect what is being imported or exported.

The Service is authorized under the Endangered Species Act, the Lacey Act, the Marine Mammal Protection Act, and the Wild Bird Conservation Act, to detain for inspection and seize without warrant, wildlife and wildlife products imported into or exported from the United States contrary to these laws. The Service regards such detentions as a ''refusal of clearance'' of the wildlife until certain necessary matters pertaining to the import or export of the item are satisfactorily resolved. Generally searches of persons or property will ordinarily require as a standard, a showing of ''probable cause''. In situations involving the international border or its functional equivalent, however, probable cause is ordinarily not required to detain and inspect when such activity is accomplished in a fashion consistent with constitutional limitations and are made pursuant to existing statutory authorities. The rationale for this special case exemption to the usual constitutional restraints has been termed by the Federal courts as the ''compelling'' interest of the United States in maintaining control of its own borders. In general, the Service's authority to conduct inspections and the authority to refuse clearance of wildlife and wildlife items at designated ports or designated border crossings are based upon a ''reasonable suspicion'' standard. This standard is in keeping with the generally accepted practice used by all federal agencies when conducting inspections at the international border. The Service, therefore, is not required to show actual probable cause, or to obtain a ''warrant'', to inspect shipment or refuse entry thereof and detain wildlife products when such activities are done consistent with its established authority at an International Border or the functional equivalent thereof.

One commenter suggested that the Service should be responsible for the identification of wildlife specimens entering the United States. The Service has clearly stipulated in 50 CFR 14.53, that the burden of proof for identification lies with the owner, importer or consignee of the wildlife. The Service will identify wildlife in order to determine if a violation of the law has occurred. The importer, owner, or consignee of imported wildlife, or wildlife products, however, is required to establish the identity of wildlife being imported to the satisfaction of the Service.

One commenter expressed the opinion that in most cases documents submitted by importers and exporters indicating the taxonomic identity of the wildlife being imported or exported are correct. The Service has found through experience that such information is unfortunately often incorrect. Importers and exporters have in many instances submitted paperwork incorrectly declaring the wildlife being shipped, and have presented CITES permits which contained erroneous or false information. Although a majority of such imports and exports of wildlife are done correctly and in full compliance with the law, the Service occasionally deals with persons who intentionally misrepresent wildlife and forge documents or use falsified permits to circumvent the law. In order to remain diligent for criminal activity and provide an effective deterrent to such activity, the Service will not ordinarily accept documentary evidence merely at face value. The Service pursuant to its treaty obligation under CITES and a statutory obligation under the Lacey Act, Endangered Species Act, etc. is required to maintain a level of diligence in regards to the required documentation and, in such capacity, question the validity of documents that may be false and otherwise circumvent the purpose of the convention and domestic laws. It is important to note, that the movement in commerce of a particular wildlife specimen may in itself be illegal. The lawful movement of wildlife in commerce is dependent upon its taxonomic identification. The fact that an importer may, in good faith, believe his importations of wildlife to be legal, and therefore lawful in commerce, does not legitimize such importations. In order to carry out it's enforcement function properly, the Service cannot automatically make assumptions as to the status of wildlife shipments relative to the law. The Service requires that

importers show, via Declaration, that a wildlife item(s) complies with the law. The Service, therefore, in the exercise of due diligence will routinely inspect such shipments to ensure compliance with applicable law.

Comments pertaining to 50 CFR 12.11

Notification of seizure

One commenter representing an organization, expressed dissatisfaction with the contents and procedures of the Service's notification of seizure. The commenter noted that, in his experience, the Service's Regions will differ on how the owner or consignee is notified of a seizure. The commenter also noted that owners or consignees are ''merely informed'' of seizures and the contemplation of forfeiture or civil penalty proceedings, and are not informed of procedures available to resolve the problem. The Service does not agree with this characterization, and would direct members of the interested public to Sections 12.11 and 12.23 of Title 50. Section 12.11 requires that the owner or consignee is personally notified of a seizure. This notice specifies the time, place, and reason for the seizure. Section 12.23, which also requires a Notice of Proposed Forfeiture contain specific reference to the provisions of the laws or regulations allegedly violated, and also states that any person desiring to claim the property must file a claim and bond. Service procedures for filing a claim and bond, filing a motion for stay, and filing a petition for remission, which allows the petitioner an opportunity to file a statement of facts and circumstances.

Another commenter noted that in his opinion the Service has not established procedures for resolution of ambiguities over species identification and documentation. The commenter also noted that owners or consignees of wildlife imports are not consulted regarding CITES document verification. In response to this comment it is the Service's policy that the importer, owner, or consignee of wildlife imports be vested with the responsibility for making a proper declaration of the wildlife to the Service upon importation. Any ambiguities arising from the declaration would be grounds for refusal of clearance and/or seizure of the item in question. Matters involving ambiguities in documentation, e.g. the verification of CITES documents, are generally internal to the workings of the CITES convention and may involve official communique between the Government of the United States and foreign governments through the State Department. The Service is not obligated to consult with the owner or importer of wildlife items in discussions with foreign governments, when official documents meant to communicate information between governments are involved.

One commenter expressed the concern about the adequacy of due process and about any necessary involvement in administrative proceedings prior to civil or criminal trial. The Service notes, in response to the concerns expressed by the commenter, that 50 CFR Parts 11 and 12 contain specific procedures, which require the involvement of the owner. Nothing contained in these regulations, however, will restrict an individuals ability to produce evidence of any form in their defense, or restrict their access to administrative or judicial process. In the case of civil penalty assessment the violator (respondent) may undertake informal discussion with the Director in resolution of the proposed penalty, or in the case of proposed forfeiture may produce a statement of all facts and circumstances as authorized by § 12.24. The Service, however, is bound by the established procedures found in the Federal Rules of Criminal and Civil Procedure, Titles 18 and 28 of the United States Code, respectively.

One commenter expressed concern about not being informed as to the Service's determination of the identity of a species of wildlife whose identity is in question. The Service procedures established at Section 12.23(B) requires the Service to describe the property, as well as the specific laws or regulations violated. Rule 16 of the Federal Rules of Criminal Procedure and Rule 26 of the Federal Rules of Civil Procedure also require the release of this information to owners, importers, or consignees of imported wildlife.

Comments Pertaining to 50 CFR 12.24

Petition for Remission of forfeiture

One commenter recommended revision of this section due to a perceived dissatisfaction with the length of time the Service takes to affect forfeiture after the seizure of a wildlife item. The commenter also suggested that the Service should detain wildlife for a period of time that is no longer than that allowed by the various Circuit Courts of Appeal. The commenter also expressing the opinion that the Service has ''egregiously'' violated reasonable time limits as a matter of routine. The commenter further suggested that a remedy to the perceived problem is to require the Solicitor's Office to issue an order to delay any initiation of forfeiture proceedings, until after ''the proceeding is finally disposed of by a written decision.'' The Service does not agree with the view expressed by the commenter and does not believe that the further delays that would be incurred by such additional requirements in forfeiture proceedings, would contribute in any meaningful way to the adequacy of the process.

The Service acknowledges that some clarification of the terminology of forfeiture is in order. Some confusion exists between the terms detention, refusal of clearance, and seizure. The ''refusal of clearance'' of wildlife is generally used by the Service to provide for time to verify permits or obtain positive identification of the wildlife in question. This process is in many ways analogous to ''investigatory detention'' which has been upheld by the courts as long as the reason for detention and length of detention are not unreasonable. It is essential to the work of the Service, that wildlife be properly identified to determine whether or not a violation of the law has in fact occurred. The outcome of this identification may eventually lead to an items forfeiture. Wildlife is, as a matter of policy, to be held no longer than necessary to determine identity or verify permits allowing entry. The Service, in carrying out this responsibility, will routinely work with foreign governments to verify permits and will often seek the advice of experts in various wildlife fields of study. Specialists in these fields are not always readily available, whether in the United States or abroad, and such permit verification or wildlife identification may take additional time. The Service, in such cases, will leave in effect a refusal of clearance of wildlife for a period of time no longer than that which is reasonable to ensure compliance with the law. Upon the completion of this process, the wildlife in question, is either seized, released, abandoned by the importer or owner, or re-exported.

The Service is of the view that the commenter may be confusing ''detention'' with the ''refusal of clearance'' of wildlife upon the importation of such wildlife, as stated in § 14.53. When the correct identity of wildlife has not been established by the importer or owner, or can not be established, the Service may refuse to clear the wildlife for entry into the United States. Refusal will occur when there is reasonable suspicion to believe that an item is not in compliance with U.S. laws or regulations. The Service is under no obligation to identify or ''seize'' (take custody of an item) simply because it has refused to allow the item into the United States. This may lead to

the perception that the item has been detained for a long period of time because the importer cannot take possession, when, in many cases, the item may be re-exported to the country of origin or abandoned. The Service agrees, that refusal to clear wildlife with no reasonable suspicion of wrongdoing, or when longer than necessary to ensure compliance with the law, is unacceptable.

The conditions for the seizure of wildlife are distinctly different from that of refusal of clearance and should be distinguished. In a seizure scenario, the Service will take actual custody of the item in question. The Service will generally seize wildlife in instances where an importer is either unable to provide the required documents, is unable to satisfy applicable Service requirements, or is in clear violation of applicable law. Wildlife parts or products may, therefore, be seized and held subject to eventual forfeiture. The Service has been charged with the responsibility for wildlife law enforcement and to thereby take such measures to detect the illegal importations and exportations of wildlife items. In many cases items of wildlife are not contraband ''per se'', and therefore, require additional identification to establish legality. Exigent circumstances have generally been held by the courts to exist at the border, where wildlife is being imported or exported, because once such items are released they are often unrecoverable. The importation of illegal wildlife into the U.S. is subject to prosecution as a criminal felony violation under certain conditions. The Service must balance its responsibilities in conservation law enforcement against the rights of property owners to fair and adequate legal process. The Service believes it can accomplish its conservation role effectively without adversely affecting the rights of individuals to fair and adequate process in law, and believes its procedures are a reasonable approach to seizure and forfeiture.

Comments Pertaining to 50 CFR 12.33

Disposal

One commenter from a scientific organization expressed concern about the Service's potential destruction of forfeited property that might have scientific value. The commenter recommended that a record be maintained of attempts to donate, sell, or transfer forfeited property with scientific value prior to its destruction. The Service strongly agrees with the concept of using scientific specimens rather than destroying them. The Service is of the view that adequate safeguards are already in place to ensure this does not occur, and refers the public to 50 CFR 12.33(a) and 12.36(a). Section 12.33 stipulates that the Director must attempt to dispose of any wildlife or plant by the order in which the disposal methods appear in the regulation. This part applies unless destruction is by court order. The options; return to the wild; use by the Service or transfer to another government agency; donation or loan; and Sale, all appear before destruction. Section 12.36 specifically authorizes the donation or loan of wildlife and plants for scientific purposes.

Comments Pertaining to 50 CFR 12.34

Return to the Wild

One commenter expressed concern about ''the release of plant or wildlife species with broad or fragmented geographic ranges.'' The commenter was concerned that such species should not be released indiscriminately within the species range because of the possible introduction of deleterious genes or pathogens. The Service understands this concern and would note that this section includes the words ''released to * * * suitable habitat.'' Suitable habitat would include areas where the possibility of introduction of pathogens or undesirable genes would not occur. One of the legal authorities under which the Service is authorized is Executive Order 11987, entitled, ''Exotic Organisms.'' This Executive Order directs Federal agencies to restrict the introduction of exotic species into natural ecosystems of the Untied States. The intent of E.O. 11987 is clear and a species' return to the wild in the U.S. should be limited to suitable historic range. The service recommends consultation with biologists familiar with species of concern, prior to the release of any live wildlife.

Comments Pertaining to 50 CFR 12.35

Use by the Service or Transfer to Another Government Agency for Official Use

One commenter representing a scientific association recommended that scientific research should be added as one of the options for the use or transfer of forfeited property under this section. The commenter suggested that research be given first priority for the use or transfer of such property. The Service agrees that research is a legitimate use for appropriate forfeited items. The Service believes that the option to allow return to the wild of live forfeited specimens should, however, remain the number one option under this section. The Service believes that returning wildlife to the wild whenever possible is the option most consistent with the mission of the Service. Research is authorized under the current regulation as the number two option for use or transfer of forfeited items. The scientific research option appears as the number five option also, as ''other scientific purpose.''

Comments Pertaining to 50 CFR 12.36

Donation or Loan

One organization recommended revision of this section to include within its provisions, the ''conservation and captive propagation'' of live forfeited wildlife. the Service supports the premise raised by the commenter, but believes the present regulation adequately provides for such purposes. The concept of ''conservation'', although not always easily distinguished, nonetheless, underlies all of the Service's efforts with regard to the donation or loan of forfeited items. The Service, however, believes that it would be nearly impossible to list all of the authorized purposes that any particular forfeited item could be used for. The donation or loan of such property, as a basic rule, must be consistent with appropriate scientific, educational, or public display purposes. When the captive propagation of live wildlife is consistent with these purposes, and not for individual personal gain, nothing in the revised regulation would preclude it as a legitimate use for donated or loaned wildlife or plants.

Comments Pertaining to 50 CFR 12.51

Return Procedure

One organization commented on modification of this part to provide for the return of seized property within 30 days. The Service agrees that any unnecessary delay in the return of seized property is unwarranted. In general in cases which require the return of seized property, the Service has sought to ensure that the 30 day standard mentioned by the commenter is satisfactorily met. Under the current regulation the Service is required to promptly return property when the reason for seizure is not sustainable, either criminally or civilly.

Required Determination

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. This proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Felexibility Act, 5 U.S.C. 601 *et seq.*

This action is not expected to have significant taking implications, as per Executive Order 12630. This proposed rule does not contain any additional information collection requirements, beyond those approved under OMB approval Number 1018–0022, that would require the approval of OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action does not contain any federalism impacts as described in Executive Order 12612. These proposed changes in the regulations in Part 12 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under Section 516 of the Department Manual. An Environmental Action Memorandum is on file at the U.S. Fish and Wildlife Service Office in Arlington, Virginia. The determination has been made pursuant to section 7 of the Endangered Species Act that the proposed revision of Part 12 will not effect federally listed species. These proposed regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Author

The originators of this proposed rule are Law Enforcement Special Agent John M. Neal and Special Agent Jerome S. Smith of the Division of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia.

List of Subjects in 50 CFR Part 12

Administrative practice and procedure, Exports, Fish, Imports, Plants, Seizures and forfeitures, Surety bonds, Transportation, Wildlife.

Regulation Promulgation

For the Reasons set out in the preamble, Title 50, Chapter I, Subchapter B of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 12—SEIZURE AND FORFEITURE PROCEDURES [AMENDED]

1. The authority citation for Part 12 is revised to read as follows:

Authority: 16 U.S.C. 4222–4241; 4901–4916; 18 U.S.C. 42

2. Section 12.2 is amended by revising paragraphs (f) and (i), and adding a paragraph (k), to read as follows:

§ 12.2 Scope of regulations.

* * * * *

(f) The African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*;

* * * * *

(i) The Lacey Act, 18 U.S.C. 42;

* * * * *

(k) The Wild Exotic Bird Conservation Act, 16 U.S.C. 4901 *et seq.*

3. Section 12.3 is amended by revising paragraphs (a)(2) and (a)(4) to read as follows:

§ 12.3 Definitions.

(a) * * *

(2) *''Disposal''* includes, but is not limited to, remission, return to the wild, use by the Service or transfer to another government agency for official use, donation or loan, sale, or destruction; and forfeited and/or abandoned wildlife transferred to the Fish and Wildlife National Forfeited and Abandoned Wildlife Repository.

* * * * *

(4) *''Solicitor''* means the Solicitor of the Department of the Interior and any person designated by the Solicitor to initiate and prosecute a civil penalty or administrative forfeiture proceeding.

* * * * *

§ 12.5 [Amended]

4. Section 12.5 is amended by removing the words ''Special Agent in Charge'', and by adding in their place ''Assistant Regional Director—Law Enforcement.''

5. Section 12.6 is amended by revising paragraph (a) to read as follows:

§ 12.6 Bonded release.

(a) Subject to the conditions set forth in paragraphs (b) and (c) of this section, and to such additional conditions as may be appropriate, the Service, in its discretion, may accept, cash, check, or certified bank check or other security (including, but not limited to, payment of the value as of the time and place of release) in place of any property seized under the African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*, Endangered Species Act, 16 U.S.C. 1531 *et seq.*; Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*; Lacey Act, 18 U.S.C. 42, and 16 U.S.C. 3371 *et seq.*; Airborne Hunting Act, 16 U.S.C. 742j-1; Eagle Protection Act, 16 U.S.C. 668 *et seq.*; or Wild Exotic Bird Conservation Act, 16 U.S.C. 4901 *et seq.*

* * * * *

6. Section 12.12 is revised to read as follows:

§ 12.12 Appraisement.

The Service shall determine the value of any property seized under any statute administered by the Service. If the seized property may lawfully be sold in the United States, its domestic value shall be determined in accordance with § 12.3. If the seized property may not lawfully be sold in the United States, its value may be determined by other reasonable means.

7. Section 12.22 is revised to read as follows:

§ 12.22 Civil actions to obtain forfeiture.

The Solicitor may request the Attorney General of the United States to file a civil action to obtain forfeiture of any property subject to forfeiture under any statute administered by the Service. If the Solicitor intends to assess a civil penalty, no forfeiture action under the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, may be initiated until such civil penalty has been assessed; the administrative action to obtain forfeiture must be commenced within 30 days after such assessment. For the purposes of Section (3)(a) of the Lacey Act (16 U.S.C. 3372(a)), the importation of a marine mammal or a marine mammal product, as defined in 16 U.S.C. 1362, the importation of a migratory bird, part, nest, or egg, as regulated pursuant to 16 U.S.C. 703 *et seq.*, or the importation of any species of wildlife, as regulated pursuant to 18 U.S.C. 42, is deemed to be a transportation of wildlife.

8. Section 12.23 is amended by revising paragraphs (a), (b)(1)(A), (b)(1)(B), and (b)(2), (b)(4) introductory text, paragraphs (b)(4)(ii), and (c) to read as follows:

§ 12.23 Administrative forfeiture proceedings.

(a) *When authorized.* The Solicitor may obtain forfeiture of property under any authorizing statute administered by the Service in accordance with this section when the property is determined under 12.12 to have a value of not greater than $500,000, or, without regard to the value of the wildlife, when the wildlife being imported is determined to be prohibited.

(b) *Procedure*—

(1) * * *

(A) *Publication.* The notice will be published once a week for at least three successive weeks in a newspaper of general circulation in the locality where the property was seized. If the value of the seized Property as determined under § 12.12 does not exceed $2500, the notice may be published by posting, instead of newspaper publication, for at least three successive weeks in a conspicuous place accessible to the public at the Service's enforcement office, the U.S. District Court or the U.S. Customhouse nearest the place of seizure.

(B) *Contents.* Articles included in two or more seizures may be advertised as one unit. The notice must describe the property, including, in the case of motor

vehicles, the license, registration, motor, and serial numbers. The notice must state the time and place of seizure, as well as the reason therefor, and will specify the value of the property as determined under § 12.12. The notice will contain a specific reference to the provisions of the laws or regulations alleged to be violated and under which the property is subject to forfeiture. The notice will state that any person desiring to claim the property must file a claim and a bond in accordance with paragraph (b)(2) of this section, and will state that if a proper claim and bond are not received by the proper office within the time prescribed by such paragraph, the property is summarily forfeited to the United States and will be disposed of according to law. The notice will advise interested persons of their right to file a petition for remission of forfeiture with the Solicitor's office, in accordance with and within the time limits set forth in § 12.24. Such petition for remission may be filed in lieu of, or in addition to, the aforementioned claim and bond. The notice will further provide that if the claim and costs bond are not timely received, that all potential claimants are deemed to admit the truth of the allegations of the notice and the property is summarily forfeited to the United States.

(2) *Filing a claim and bond.* Upon issuance of the Notice of Proposed Forfeiture, any person claiming the seized property may file with the Solicitor's office indicated in the notice, a claim to the property and a non-refundable certified or bank check made payable to Clerk, United States District Court in the penal sum of $5,000, or ten per centum of the value of the claimed property, whichever is lower, but not less than $250. Any claim and bond must be received in such office within 30 days after the date of first publication or posting of the notice of proposed forfeiture. The claim will state the claimant's interest in the property. There will be endorsed on the bond a list or schedule in substantially the following form which must be signed by the claimant in the presence of the witnesses to the bond, and attested by the witnesses:

List or schedule containing a particular description of seized article, claim for which is covered by the within bond, to wit:

_____

_____

The foregoing list is correct.

Claimant: _____

Attest: _____

[Note: The claim and bond referred to in this paragraph will not entitle the claimant or any other person to possession of the property. Such filing only stops the summary forfeiture proceeding.]

(3) * * *

(4) *Motion for stay.* A Motion for Stay will be considered only if the owners of the property are also charged with a criminal violation based upon the same illegal act. Upon issuance of the notice of proposed forfeiture, any person claiming the seized property may file with the Solicitor's regional or field office indicated in the notice a motion to stay administrative forfeiture proceedings. Any motion for stay must be filed within 30 days after the date of first publication or posting of the Notice of Proposed Forfeiture. Each motion must contain:

(i) * * *

(ii) The claimant's offer to pay, in advance, all reasonable costs anticipated to be incurred in the storage, care, and maintenance of the seized property for which administrative forfeiture is sought. Where a stay of administrative forfeiture proceedings would not injure or impair the rights of any third parties, and where the claimant has agreed to pay in advance, anticipated, reasonable storage costs associated with the granting of a stay, the Solicitor may, in his discretion, grant the motion for stay and specify reasonable and prudent conditions therefor, including but not limited to the duration of the stay, a description of the factors that would automatically terminate the stay, and any requirement for a bond (including amount) to secure the payment of storage and other maintenance costs.

* * * * *

(c) *Institution of forfeiture proceedings before completion of other administrative proceedings.* Nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of penalty assessment or remission procedures.

9. Section 12.24 is amended by revising paragraphs (a), (b) introductory text, (c), and (e) to read as follows:

§ 12.24 Petition for remission of forfeiture.

(a) Any person who has an interest in any property utilized in unlawful taking and subject to forfeiture under statutes cited in section 12.2 of this Part or any person, who has incurred or is alleged to have incurred, a forfeiture of any such property, may file with the Solicitor or, when forfeiture proceedings have been brought in United States District Court, the Attorney General of the United States, a petition for remission of forfeiture.

(b) A petition filed with the Solicitor need not be in any particular form, but it must be received before disposal (See section 12.3) of the property has occurred and must contain the following: * * *

(c) The petition must be signed by the petitioner or the petitioner's attorney at law or representative. If the petitioner is a corporation, the petition must be signed by an authorized officer, supervisory employee, or attorney at law, and the corporate seal must be properly affixed to the signature.

* * * * *

(e) Upon receiving the petition, the Solicitor shall first decide if disposal of the property has occurred, then, if disposal has not occurred, whether or not to grant relief. In making a decision, the Solicitor shall consider the information submitted by the petitioner, as well as any other available information relating to the matter.

* * * * *

10. Section 12.25 is revised to read as follows:

§ 12.25 Transfers in settlement of civil penalty claims.

At the discretion of the Solicitor, an owner of wildlife or plants who may be liable for civil penalty under statutes cited in Section 12.2 of this Part, may be given an opportunity to completely or partially settle the civil penalty claim by transferring to the United States all right, title, and interest in any wildlife or plants that are subject to forfeiture. Such transfer may be accomplished by the owner's execution and return of a United States Customs Form 4607 or a similar compromise transfer of property instrument provided by the Service.

11. Section 12.26 is added to Subpart C to read as follows:

§ 12.26 Summary sale of perishable and other property.

Any live wildlife or plant or other seized property which the Director has determined is liable to perish, deteriorate, decay, waste, or is perishable and which can lawfully be sold, shall be advertised for sale and sold at public auction at the earliest possible date. The Director shall proceed to give notice by advertisement of the summary sale for such time as he considers reasonable. This notice shall be of sale only and not notice of seizure and intent to forfeit. The proceeds of the sale shall be held subject to the claims of parties in interest in the same manner as the seized property would have been subject to such claims.

12. Section 12.33 is amended by revising paragraph (a) introductory text and by adding paragraph (e) to read as follows:

§ 12.33 Disposal.

(a) The Director shall dispose of any wildlife or plant forfeited or abandoned under the authority of this part, subject to the restrictions provided in this subpart, by one of the following means, unless the item is the subject of a petition for remission of forfeiture under 12.24 of this part, or disposed of by court order:

* * * * *

(3) Transfer to the Fish and Wildlife Service National Forfeited and Abandoned Wildlife Repository.

* * * * *

(e) All forfeited and abandoned wildlife or plants which are transferred to the Fish and Wildlife Service National Forfeited and Abandoned Wildlife Repository shall be deemed disposed property for the purposes of this section.

Dated: April 13, 1995.

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks.

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Part VIII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701, et al.
Lands Eligible for Remining; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 785, 816, and 817

RIN 1029–AB74

Lands Eligible for Remining

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is issuing final rules at 30 CFR chapter VII implementing changes made to Title V of the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA) by the Energy Policy Act of 1992. The final rules are intended to provide incentives for the remining and reclamation of previously mined and inadequately reclaimed lands eligible for expenditures under section 402(g)(4) or 404 of SMCRA.

EFFECTIVE DATE: December 27, 1995.

FOR FURTHER INFORMATION CONTACT: Douglas J. Growitz, P.G., Office of Surface Mining Reclamation and Enforcement, Room 110 SIB, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–2561.

SUPPLEMENTARY INFORMATION:

I. Background

On October 24, 1992, the President signed into law the Energy Policy Act of 1992, Pub. L. 102–486. Section 2503 of the Energy Policy Act, Coal Remining, in part amended sections 404, 510, 515(b)(20), and 701 of SMCRA in order to provide the following incentives to encourage, in an environmentally-sound manner, the remining of lands eligible for expenditures under sections 402(g)(4) and 404 SMCRA: (1) The permittee of such remaining operations shall not be subject to permit blocking under section 510(c) of SMCRA for any violation resulting from an unanticipated event or condition occurring on the remaining site; and (2) The period of responsibility for successful revegetation for such remining operations is reduced to five years in the West and two years in the East.

The relevant portion of section 2503 provides as follows:

Section 510 is amended by adding the following new subsection at the thereof:

(e) MODIFICATION OF PROHIBITION—After the date of enactment of this subsection, the prohibition of subsection (c) shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mining operation on lands eligible for remining under a permit held by the person making such application. As used in this subsection, the term ''violation'' has the same meaning as such term has under subsection (c). The authority of this section and section 515(b)(20)(B) shall terminate on September 30, 2004.

Section 515(b)(20) is amended to insert (A) after (20) and add the following new subparagraph at the end thereof:

(B) on lands eligible for remining assume the responsibility for successful revegetation for a period of two full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards, except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will be extended for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards.

Section 701 is amended by adding the following two new paragraphs:

(33) the term ''unanticipated event or condition'' as used in section 510(e) means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit; and

(34) the term ''lands eligible for remining'' means those lands that would otherwise be eligible for expenditures under section 404 or under section 412(g)(4).

The purpose of section 2503 was set forth in the House of Representatives Report from the Committee on Interior and Insular Affairs on H.R. 776, the predecessor bill in the House of Representatives (H.R. Rep. No. 102–474, 102d Cong., 2d Sess. 85 (1992)) which contains the following discussion: ''The (coal remining) provisions of this section seek to make coal available that otherwise would be bypassed by providing incentives for industry to extract and reprocess, in an environmentally sound manner, coal that remains in abandoned mine lands and refuse piles. Current law reclamation performance standards were devised to address surface coal mining on undisturbed lands; the unintended result is to discourage remining. Remining also serves to mitigate the health, safety, and environmental threats posed to coal field residents by augmenting the work done under the Abandoned Mine Reclamation Program.''

To implement sections 510(e) and 515(b)(20)(B) of SMCRA, OSM proposed rules on June 2, 1994 (59 FR 28744) which would: (1) Revise 30 CFR 701.5, Definitions; 30 CFR 773.15, Review of Permit Applications; 30 CFR 816.116 and 817.116, Revegetation: Standards for Success; and (2) add a new 30 CFR 785.25, Lands Eligible for Remining.

Public comments were received until August 1, 1994. No public meetings nor hearings were requested or held. OSM received letters in response to the June 2, 1994, proposed rule from eight commenters representing industry, State regulatory authorities, Federal agencies, Environmental groups, and individual citizens. OSM has reviewed each comment carefully and has considered the commenters' suggestions and remarks in writing this final rule.

OSM previously implemented another remining provision of the Energy Policy Act dealing with AML eligibility under a separate rulemaking (59 FR 28136, May 31, 1994). A provision dealing with abandoned coal refuse sites is also being addressed under a separate rulemaking.

II. Rules Adopted and Responses to Public Comments on Proposed Rules

1. 30 CFR Part 701—Permanent Regulatory Program

Section 701.5, Definitions, is being amended by adding two terms—''lands eligible for remining'' and ''unanticipated event or condition''—both of which were defined in section 2503(c) of the Energy Policy Act.

a. Lands eligible for remining. The definition adopted for the term ''lands eligible for remining'' is the same as the proposal and the definition is section 701(34) of SMCRA. Under the final rule, ''lands eligible for expenditures under sections 404 or 402(g)(4) of the Act. Thus, the following lands would be included under this definition: those lands which were mined by surface coal mining operations or otherwise affected by surface or underground mining operations and which were either (1) abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws; (2) abandoned or left in an inadequate reclamation status after August 3, 1977 but before State received primacy under SMCRA and for which available bond is insufficient to provide for adequate reclamation; or (3) completed being mined between August 4, 1977, and November 5, 1990, and remain unreclaimed due to the insolvency of a surety company occurring during that same period.

Many remining operations involve the surface mining or ''daylighting'' of underground workings. Depending on the extent that overlaying or adjacent surface lands are affected by the prior underground workings, e.g., through subsidence, those lands may or may not fall within section 701(34)'s definition of ''lands eligible for remining.'' if, under the example above, the surface disturbances resulting from previous underground mining are so slight that the lands do not constitute ''lands eligible for remining,'' the ''daylighting'' of the underground workings would then not qualify for the remining incentives provided by sections 510(e) and 515(b)(20)(B) and implemented by this rulemaking.

One commenter suggested that the definition of ''lands eligible for remining'' contain the phrase ''under a permit issued prior to September 30, 2004.'' Although OSM has not made the suggested change to the definition, OSM agrees that Sections 510(e) and 515(b)(20)(B) of SMCRA apply only to permits issued before September 30, 2004. As explained below, this concept is reflected in 30 CFR 773.15(b)(4) and in 30 CFR 816.116 and 817.116.

b. Unanticipated event or condition. The definition adopted for ''unanticipated event or condition'' is similar to the proposal and consistent with the definition in section 701(33) of SMCRA. An ''unanticipated event or condition'' is defined in the final rule as an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated by the applicable permit. Pursuant to final § 773.15(b)(4), an operator will not be permit blocked for any violation resulting from an unanticipated event or condition occurring during the term of such remining permit issued before September 30, 2004, or any renewals thereof. The rationale for the final rules' use of the term ''arises from'' in lieu of the term ''encountered in'' used in the statutory definition is discussed later under the heading ''Phase-out of section 510(e) permit block exemption.''

(i) Related to prior mining activity The phrase ''related to prior mining'' has been added to the final definition of ''unanticipated event or condition'' to qualify which events or conditions could give rise to violations subject to the § 773.15(b)(4) permit block exemption.

This change is made in response to several commenters, one of which asserted that the proposed definition of ''unanticipated event or condition'' was too broad to be of practical value and asked whether an event or condition ''causally related'' to the unreclaimed or previously mined status of the area covered by the remining permit would qualify as unantipated. A second commenter suggested that an unanticipated event or condition must arise from the previously disturbed nature of the site. A third commenter, citing the history associated with the development of the remining amendments of the Energy Policy Act, proposed that an unanticipated event or condition should embody any event or occurrence that arises from the previously disturbed nature of the site, including acid mine discharges, despite substantial adherence to the permit.

OSM agrees with these comments that only unanticipated events or conditions related to the previously disturbed nature of the site should qualify for the section 510(e) exemption. The addition of the qualifying phrase ''related to prior mining activity'' is consistent with Congressional intent to encourage remining by extending the permit block exemption of section 510(e) to the problem events or conditions occasioned by such prior mining operations. OSM does not believe, on the other hand, that Congress intended to exempt applicants from permit blocking for violations occurring on the remining site but resulting from conditions unrelated to previous mining activities. Applicants would thereby remain permit blocked for violations solely attributable to their own conduct.

An example of an event or condition which might arise during a remining operation but not related to the prior mining activity would be the mining of previously undisturbed toxic coal seams located below previously disturbed deposits.

An example of an event or condition which might arise during a remining operation and considered related to the prior mining activity would be the discovery of hazardous materials or substances buried in depressions or pits left at an abandoned site. Such an event or condition would be considered as related to a prior mining activity because without the previous mining the hazardous materials or hazardous substances would not have been buried at the site.[1]

OSM is broadly interpreting the qualifying phrase ''related to prior mining'' so as to afford some practical incentive to remining while also maintaining consistency with the provisions of the Energy Policy Act. Thus, for the purposes of this final rule, an event or condition can qualify as an ''unanticipated'' event or condition if it is related to prior mining at the site. One commenter asked if OSM meant only that acts of God could result in unanticipated events or conditions and requested some clarification in terms of examples. An act of God resulting in extreme hydrologic conditions might significantly vary from the permit's estimate and could reasonably qualify as one example of an unanticipated event or condition if the event or condition causing the violation is related to prior mining activity at the site.

(ii) Acid mine drainage. An industry commenter asserted that any acid mine drainage (AMD) which occurs despite substantial adherence to a permit should be included in the meaning of ''unanticipated event or condition'' and pointed to the legislative history of the remining legislation to further its argument. The commenter cited first to strong State and industry support for the definition of ''unanticipated event or condition'' in H.R. 4053 (1990) which it characterized as addressing the issue of AMD. The commenter then cites to State and industry opposition to the subsequent provisions of H.R. 1078 (1991) which would have explicitly excluded from the definition of ''unanticipated event or condition'' any event or condition involving more than a minimal amount of toxic overburden or pre-existing acid discharge. Industry concluded that because H.R. 4381 (1992) substantially carried forward the H.R. 4053 and 1078 definitions of ''unanticipated event or condition'' but deleted the objectionable H.R. 1078 exclusion for toxic overburden or pre-existing acid discharge, and that H.R. 776 (1992) incorporates that definition as the eventual Energy Policy Act definition, AMD should therefore be included within the meaning of ''unanticipated event or condition.

OSM agrees with the commenter that the Energy Policy Act does not exclude AMD as a type of condition which may constitute an ''unanticipated event or condition.'' On the other hand, although the Energy Policy Act does not include the AMD exclusion language of H.R. 1078, neither does the legislative history

[1] If hazardous materials or hazardous substances of any type are uncovered or released during remining, the operator must follow the requirements for notifying the National Response Center as required by the National Contingency Plan (40 CFR part 300). This would apply to the discovery or release, whether regulated under the statutory authority of the Toxic Substances Control Act (TSCA), the Resource Conservation and Recovery Act (RCRA), or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). These laws are administered by the U.S. Environmental Protection Agency or State environmental agencies. Additional reporting and notification requirements may exist under State or local laws.

indicate that Congress intended for all AMD to be categorically included within the meaning of ''unanticipated event or condition.'' Clearly the issues of AMD and the allowance to be given in remining to toxic overburden and pre-existing acid discharge were high profile and controversial among environmentalist, industry and regulatory supporters during the drafting of all the cited House Bills. The hearings on these Bills reflect a recognition that the definition of ''unanticipated event or condition'' later incorporated into the Energy Policy Act did not address or resolve the AMD issue. (See Testimony of Dave Rosenbaum, Dept. Commissioner, Kentucky Natural Resources and Environmental Protection Cabinet, H.R. 4053, 101–72, March 13, 1990). Therefore, OSM concludes that AMD should be treated like any other condition to be evaluated on a case-by-case basis to determine whether it constitutes an ''unanticipated event or condition.''

2. 30 CFR Part 773—Requirements for Permits and Permit Processing

Section 773.15, Review of Permit Applications, is being amended by adding two new paragraphs, (b)(4) and (c)(13). These paragraphs will generally correspond to proposed paragraphs (f) and (c)(13) of § 773.15.

(a) § 773.15(b)(4). Final § 773.15(b)(4) (proposed § 773.15(f)) implements section 510(e) of SMCRA which establishes an exemption from the permit blocking provisions of section 510(c) of SMCRA. Subsequent to October 24, 1992, the final rule exempts from the permit-block provisions of paragraph (b) of § 773.15 situations where an unabated violation occurring after that date is attributed to an unanticipated event or condition arising from a remining site under a permit issued before September 30, 2004, or any renewals thereof. In such cases, the person holding the remining permit would not be rendered ineligible for a new surface coal mining permit at another site simply because of the unabated violation at the remining site. Responsibility to abate the violation, however, is not affected by the final rule.

(i) § 773.15(b)(4)(i). Final § 773.15(b)(4) has been divided into two paragraphs (i) and (ii). Although paragraph (b)(4)(i) was originally proposed as § 773.15(f), OSM believes the permit block exemption related to unabated violations resulting from an unanticipated event or condition is more appropriately located in § 773.15(b) which deals with review of violations.

Phase-In of Section 510(e) Permit Block Exemption

Comments were received seeking clarification as to the rule's phase-in *i.e.,* when must violations have occurred and when must remining permits have been issued to qualify for the section 510(e)'s permit block exemption. In addition, OSM recently approved an amendment to the Kentucky regulatory program which substantially tracked section 510(e) of the Act (60 FR 33110, June 27, 1995). This amendment, Senate Bill 208, also focussed OSM on the need for further clarification of the proposed rule's section 510(e) permit block exemption as to when remining permits need to have been issued to have violations at the site qualify for that exemption.

By its own terms, the permit block exemption in section 510(e) of SMCRA applies to all section 510(c) determinations that occur subsequent to October 24, 1992. Thus, final § 773.15(b)(4)(i) includes the introductory phrase ''Subsequent to October 24, 1992,'' as identifying the date after which a determination can be made as to the applicability of the exemption of § 773.15(b)(4).

In partial response to comments discussed below, the final rule's § 773.15(b)(4) permit block exemption will extend to unabated violations (1) occurring after section 510(e)'s October 24, 1992, enactment date; and (2) resulting from an unanticipated event or condition occurring under remining permits issued either before or after that same date. This clarification as to the intended reach of § 773.15(b)(4) is consistent with OSM's approval of the Kentucky State program amendment substantially tracking section 510(e)'s provisions.

One commenter representing several environmental associations stated that the goals of the October 24, 1992, amendments would be best served by limiting the application of the section 510(e) permit block exemption to violations that occur on a remined site after that date and under a remining permit issued in accordance with the provisions of the amended Act. (It also made similar comments on the Kentucky amendments.) In support of these positions, the commenter made a number of assertions. With regard to limiting the permit block exemption to violations that occur after October 24, 1992, the commenter asserted that Congress intended the remining provisions of the Energy Policy Act to be forward-looking in seeking to provide an incentive for future operations on previously mined and abandoned areas. In support thereof, it referenced the H.R. Rep. No. 102–474, at 85 (1992), as well as the existence of significant pre-Energy Policy Act mining of previously mined and abandoned areas. The commenter further asserted that Congress intended the section 510(e) permit block exemption to be narrowly interpreted and not used to excuse applicants who had been previously permit blocked because of pre-Energy Policy Act violations. It again referenced the House Report at 85.

This commenter also asserted that limiting the section 510(e) permit block exemption to violations occurring under a remining permit issued in accordance with the provisions of the amended Act would couple existing informational requirements in part 773 with those of proposed § 785.25 to provide a more comprehensive objective assessment of site conditions against which any claim of ''unanticipated event'' could be assessed.

Finally the commenter asserted that the Act's section 701(33) definition of the phrase ''lands eligible for remining'' implies a determination by the regulatory authority in advance of issuing a remining permit that the site would otherwise be eligible for AML expenditures.

OSM agrees that the plain language of the section 510(e) permit block exemption limits its application to violations that occurred on a remining site after the October 24, 1992, amendment date. Inclusion of the statutory phrase ''(a)fter the date of enactment of this subsection,'' in section 510(e) of SMCRA evinces a clear Congressional intent that the provision be prospective from October 24, 1992, and relate to events occurring after that date. OSM also agrees with the commenter that the legislative history of the exemption supports such a limitation and that persons already permit-blocked under section 510(c) of SMCRA for violations occurring before October 24, 1992, could not become unblocked by enactment of section 510(e). Accordingly, the section 510(e) permit block exemption of final § 773.15(b)(4)(i) will be limited to violations occurring after October 24, 1992.

The incentive for future remining provided by the section 510(e) permit block exemption logically extends both to parties already conducting remining operations as of October 24, 1992, and those contemplating entirely new remining operations after that date. For the first group, section 510(e) provides some incentive to continue remining.

For the second group, section 510(e) provides an incentive to begin remining new properties.

OSM disagrees with the commenter's suggestion that the goals of the 1992 amendments would be best served by limiting the section 510(e) permit block exemption to post-October 24, 1992, violations occurring at a remining permit issued only in accordance with the provisions of the amended Act, *i.e.*, a § 785.25 permit. Although the language of section 510(e) and its legislative history limits the exemption to post-October 24, 1992, violations, neither the language of section 510(e) nor its legislative history requires that the permit be issued after October 24, 1992, or under § 785.25 or a State program equivalent.

While the commenter's suggestion of limiting the permit block exemption to § 785.25 permits would provide enhanced information on site conditions, there are practical considerations which would weigh against such a suggestion. For primacy States, limiting the permit block exemption to § 785.25 permits would further postpone the availability of the exemption until 1996 or 1997 because of the time normally needed to submit and gain approval of a state program amendment. The commenter's suggestion of limiting the permit block exemption to § 785.25 permits would, therefore, not accommodate the plain language of the Act and clear legislative intent that the remining amendments provide a timely incentive for the remining of previously abandoned mine lands.

The commenter's suggestion that the section 510(e) exemption be limited to § 785.25 permits would also conflict with its previously discussed position that the section 510(e) exemption be limited to post-October 24, 1992, violations occurring on remining sites. For the remining incentive of section 510(e) to apply to violations occurring immediately following the October 24, 1992, enactment date, the underlying remining permit would have had to have been issued prior to that date. Accordingly, OSM does not interpret section 510(e) as imposing a post-October 24, 1992, limitation on when permits must have been issued to qualify for the permit block exemption.

In addition, contrary to the commenter's assertion, the Act's section 701(33) definition for ''lands eligible for remining'' does not establish the requirement for a determination by the regulatory authority in advance of issuing a remining permit that the site would otherwise be eligible for AML expenditures. While final § 773.15(c)(13) will require a ''lands eligible'' finding before issuance of remining permits in the future under § 785.25, the determination of ''lands eligible'' for remining will also have to be made for existing permittees seeking to avail themselves under § 773.15(b)(4)(i) of the section 510(e) permit block exemption.

On the basis of the above discussion, the phase-in for the section 510(e) permit block exemption at § 773.15(b)(4)(i) will be tied to the date of violation but not to the date of permit issuance. Violations must have occurred after October 24, 1992, and resulted from an unanticipated event or condition arising from surface coal mining and reclamation operations on lands eligible for remining under a permit issued either before or after that date.

Phase-Out of Section 510(e) Permit Block Exemption

Final paragraph (b)(4)(i) does not contain the language of proposed paragraph (f) that the permit block prohibition of paragraph (b) shall not apply ''(u)ntil September 30, 2004.'' In its place, final paragraph (b)(4)(i) provides that the permit block prohibitions of paragraph (b) shall not apply to ''* * * any violation resulting from an unanticipated event or condition * * * under a permit, issued before September 30, 2004, or any renewal thereof * * *.'' Thus final § 773.15(b)(4)(i) provides that the permit block exemption will continue to be available for violations occurring on lands eligible for remining under a remining permit issued before September 30, 2004, or any renewals thereof, even if the § 772.15(b)(4) determination occurs after that date.

This change in the final regulatory text from the proposed rule implements the phase-out provision of section 510(e) and is made in response to comments received from industry and State regulatory authorities. These commenters questioned the apparent intent of the proposed rule language that the permit block exemption would continue only until September 30, 2004. The effect of such provision was seen as allowing a company to be permit blocked on October 1, 2004, and thereafter, for a violation occurring on an eligible remining site permitted before September 30, 2004, which had earlier been exempted from the permit block section. The industry commenter asserted that Congress could not have intended an anomalous result such that one violation would be excluded from causing a permit block and subsequently form the basis for causing a permit block. Viewing the whole of the language of section 510(e) and not limiting itself solely to the provision which provided that ''(t)he authority of (that) section shall terminate on September 30, 2004,'' that commenter asserted that what Congress intended was to provide an exemption from the permit blocking provisions of section 510(c) for violations resulting from unanticipated events or conditions under permits issued prior to September 30, 2004, and not to provide such an exclusion on a temporary basis for violations occurring prior to September 30, 2004, but which exemption would suddenly disappear after September 30, 2004.

The commenter cited to the following language of section 510(e) as confirming this intent since it renders section 501(c) inapplicable to ''any violation resulting from an unanticipated event of condition *at* a surface coal mining operation on lands eligible for remining *under a permit held by the person* * * *.'' (emphasis added by commenter).

The commenter reasoned that this language clearly ties the exemption to the date of issuance of the remining permit, not the violation. Accordingly, the commenter stated that the language of section 510(e) terminating the authority of the section on September 30, 2004, should be construed to foreclose the permit block exemption to violations under a permit issued subsequent to that date. In turn, the final regulatory rule language should clearly set forth that the exemption applies to any violation arising from an unanticipated event or condition at a remining operation under a permit issued prior to September 30, 2004.

While OSM does not view the discerning of Congressional intent as to the termination of authority provisions of section 510(e) to be as clear-cut as portrayed by the commenter, OSM agrees with the principal arguments set forth above. Viewing the permit blocking exemption of section 501(e) as a whole, the emphasis should not be on whether the violation occurred before September 30, 2004, but whether the remining permit was issued before authority to grant such exemption terminated on September 30, 2004. Congress could not have reasonably intended for the small violation a ''now you are not permit blocked, now you are permit blocked'' approach. Scant incentive for remining would be provided if the permit block exemption for violations at a remining site would be temporary and expire on September 30, 2004. OSM interprets the termination date, September 30, 2004,

as the last date upon which a remining permit may be issued for which violations resulting from an unanticipated event or condition may be excluded from future permit block determinations.

In support of this statutory interpretation, OSM notes that by 2004, an increasingly large proportion of remining permits will meet the standards of § 785.25. These permits' enhanced requirements for site condition information and identification of event/condition-specific mitigation measures will go far to ensure that the section 510(e) permit block exemption will not be abused. Interpreting the section 510(e) permit block exemption so as to tie its termination of authority provision to the date of issuance of the remining permit, not to the date of the violation or to the date of the section 510(c) determination, promotes a clear Congressional intent with respect to the remining amendments to SMCRA to provide, in an environmentally sound manner, a meaningful incentive for the remining of previously abandoned sites. H.R. Rep. No. 102–474, at 85 (1992).

Accordingly, final paragraph (b)(4)(i) provides that the exclusion will continue to be available for violations occurring on lands eligible for remining under a remining permit issued prior to September 30, 2004, and any renewals thereof.

Final paragraph (b)(4)(i) also includes the term ''and any renewals thereof'' to indicate that the permit block exemption will apply to unabated violations occurring under permits issued before September 30, 2004, and subsequently renewed. The baseline information from which a § 773.15(b)(4) determination will be made as to whether a violation results from an unanticipated event or condition also does not change if the violation occurs during the original permit term or its renewal. While the ''and renewals thereof'' provision is consistent with Congressional intent to provide a remining incentive for operations on lands eligible for remining, OSM does not anticipate many occurrences when a qualifying § 773.15(b)(4) violation would first occur during the permit renewal period. In most cases, the mining on lands eligible for remining will be accomplished well within the original 5-year permit term.

Final paragraph (b)(4)(i) uses the term ''arises from'' in lieu of the term ''encountered at'' used in the statutory definition of ''unanticipated event or condition'' indicating that a violation resulting from an unanticipated event or condition can arise from a remining operation and does not have to be encountered at that remining operation in order to qualify for the permit block exemption. For further discussion of when a violation may arise away from a remining operation but as a result of an unanticipated event or condition occurring at the remining operation, see a. (ii) *Abatement obligation continues.*

(ii) § 773.15(b)(4)(ii). Final § 773.15(b)(4)(ii) represents provisions taken from other parts of the proposed rule relocated in this paragraph. Final paragraph (b)(4)(ii) provides that events or conditions arising subsequent to permit issuance related to prior mining which were not identified in the permit issued under § 785.25 shall be presumed to constitute unanticipated events or conditions for the purposes of § 773.15(b). This provision is derived from proposed § 773.15(c)(13) and has been moved in the final rule to paragraph (b)(4)(ii) as proper part of the regulatory authority's § 773.15(b)(4) determination of whether events or conditions are unanticipated. The ''may be presumed'' language of proposed § 773.15(c)(13) was changed in the final rule to ''shall be presumed'' as discussed below in response to comments.

The final rule drops the proposed heading for paragraph (b)(4), ''Lands eligible for remining'' to be consistent with the format of other paragraphs.

Presumption of Unanticipated Event or Condition

OSM recognizes that without a reasonable degree of certainty as to their regulatory application, the remining provisions proposed as incentives for remining operations would not serve as an effective incentive for remining. Thus, certain changes from the proposed to the final rules reflect an intent to provide such certainty for remining operations. Most particularly is the change from the language of proposed § 773.15(c)(13) that events or conditions arising subsequent to permit issuance ''may be presumed'' to constitute unanticipated events or conditions to the language of final § 773.15(b)(4)(ii) that such events or conditions arising subsequent to permit issuances ''shall be presumed'' to constitute unanticipated events or conditions. Operators will be able to rely on the provision that once a § 785.25 permit has been issued, events or conditions not identified in the permit shall be presumed to constitute unanticipated events or conditions for the purposes of the permit block exemption of § 773.15(b). This is primarily predicated upon the operator performing a due diligence investigation to determine which events or conditions are reasonably anticipated and then identifying such events or conditions in the permit application. This presumption could be rebutted if a permit applicant fails to identify significant potential environmental or safety problems related to prior mining activity at the site which could have been reasonably anticipated to occur and were known to the applicant or should have been known to the applicant through the due diligence investigation required under § 785.25.

This change of language in final § 773.15(b)(4)(ii) to the words ''shall be presumed'' is not intended to diminish the substantial flexibility available to, and the responsibility of, a regulatory authority prior to permit issuance to make its own informed judgment as to which events or conditions should be properly identified in the permit application. Final § 785.25(b) requires an identification of potential environmental and safety problems which could be reasonably anticipated to occur at the site. The identification would be based on a due-diligence site-specific investigation. Under final § 773.15(c)(13), the regulatory authority is required to make a finding for § 785.25 permits that the permit application contains an identification of the particular environmental and safety problems which could reasonably be anticipated to occur at the site.

The Presumption for Permits Not Issued Under Section 785.25

As discussed above under the *Phase-in of Section 510(e) permit block exemption,* the permit block exemption of § 773.15(b)(4)(i) extends to permits in existence on October 24, 1992, and is not limited to permits solely issued under § 785.25. Permits for lands eligible for remining not originally issued under § 785.25 but subsequently revised and upgraded to satisfy the permit information and permit finding requirements of §§ 785.25 and 773.15(c)(13) would qualify for the § 773.15(b)(4)(ii) presumption.

Permits for lands eligible for remining not originally issued under § 785.25 and not subsequently revised to satisfy the permit information and permit finding requirements of §§ 785.25 and 773.15(c)(13) would not qualify for the § 773.15(b)(4)(ii) presumption. An applicant for a new permit in such circumstances would have the burden of establishing that any violation which arose at one of these non-§ 785.25 permits resulted from an unanticipated event or condition. OSM agrees with a commenter that it is likely to be more difficult to establish for these permits that violations resulted from

unanticipated events or conditions than for future permits issued or revised in accordance with § 785.25 which will have identified reasonably anticipated problems and for which the § 773.15(b)(4)(ii) presumption applies.

Several comments to the proposed rule were received regarding application of the ''unanticipated event or condition'' language. One industry group asserted that events or conditions should be considered unanticipated for the purposes of the section 510(e) exemption if the operator substantially adheres to its operation and reclamation plans. The industry commenter stated that this was Congress' initial understanding of such events or conditions and cited statements made by Rep. Rahall both in introducing H.R. 4053 (101st Cong., 1990), an early predecessor to the Energy Policy Act, and later in hearings on that bill. Rep. Rahall is quoted as stating that H.R. 4053's provision were intended to free a qualified operator from responsibility to address an event or condition encountered during a remining operation that was not originally anticipated under an approved reclamation plan. Furthermore, the H.R. 4053 provisions were stated as intending to provide the regulatory authority with some ''wiggle room'' as to what constitutes an unanticipated event or condition.

OSM agrees with the commenter's position but not for the reasons asserted. OSM agrees that where a permit applicant diligently conducted an investigation to identify conditions that are reasonably anticipated, and references such conditions in the permit application, the operator should be able to have a degree of comfort that he will not be permit blocked for violations resulting from non-identified conditions which occur despite compliance with the operation and reclamation plans. This is the presumption set forth in § 773.15(4)(ii). A permit not predicated upon such complete information, however, will not be entitled to the presumption.

OSM does not agree with the commenter that the legislative history of the Energy Policy Act mandates that an event or condition that occurs despite an operator's adherence to its operations and reclamation plans should always constitute an ''unanticipated event or condition'' for the purposes of the section 510(e) exemption. Rep. Rahall's referenced introduction to H.R. 4053 would have tied reduced operator liability to full compliance with the reclamation plan but only with regard to providing operators a date-certain release of their reclamation bond. While earlier H.R. 2791 (101st Cong., 1989) did contain specific provisions terminating (all) operator liability for compliance with all the requirements of the permit and reclamation plan, such provisions were not carried forward to H.R. 4053 (1990), H.R. 1078 (102nd Cong., 1991), H.R. 4381 (102nd Cong., 1992), H.R. 776 (102nd Cong., 1992), or to the Energy Policy Act of 1992.

Penalties To Be Assessed

One commenter suggested that OSM has discretion not to require a civil penalty for violations tied to unanticipated events or conditions. The commenter further suggested that OSM should adopt a policy whereby civil penalties are not assessed for violations arising from unanticipated events or conditions. OSM finds no basis in the Energy Policy Act or its legislative history to support either suggestion.

Delinquencies Not Covered by Exemption

In the preamble to the proposed rule OSM posed the question of whether the nonpayment of delinquent penalties assessed after a notice of violation or a failure-to-abate cessation order based on an ''on the ground'' violation resulting from an unanticipated event or condition should be covered by the Energy Policy Act permit block exemption. OSM stated in the proposed rule that it intended that such delinquencies, which are violations themselves, would be covered by the exemption if they were construed as ''resulting from an unanticipated event or condition at a surface coal mining operation.'' OSM sought comments on this issue but no comments were received.

Upon consideration, OSM concludes that the non-payment of delinquent civil penalties assessed because of an unabated violation resulting from an unanticipated event or condition should not be construed as resulting from the underlying unanticipated event or condition. OSM has reached this conclusion because non-payment of penalties is a violation solely within an operator's control and is independent of the underlying on-the-ground violation caused by the unanticipated event or condition. This construction of the permit block exemption will still afford substantial incentive for remining while limiting the exemption to unabated violations resulting from events or conditions which could not reasonably have been anticipated at the time of the remining permit's issuance.

Abatement Obligation Continues

Another commenter asked whether an operator cited for a violation related to an unanticipated event or condition occurring on land eligible for remining would have an obligation to reclaim or resolve such violation even though the operator would not be permit blocked because of it. Nothing in the Energy Policy Act nor this final rulemaking insulates the operator from his existing responsibilities to abate his violations whether or not they stem from anticipated or unanticipated events or conditions. Neither is that operator insulated from other enforcement actions stemming from these unabated violations.

A third commenter questioned particular preamble discussion in the proposed rule and asked that the final rule clarify that a violation occurring off the remining site that results directly from an unanticipated event or condition occurring on the remining site is also subject to the permit-block exemption. The commenter correctly noted that the Energy Policy Act requires only that the unanticipated event or condition, not necessarily the violation itself, be at a surface coal mining operation on lands eligible for remining. In response to this comment and consistent with substantial preamble discussion in the proposed rule and as discussed elsewhere in this final preamble, OSM confirms that a violation that occurs off-site but as a direct result of an unanticipated event or condition occurring on the remining site is also covered by the § 773.15(b)(4) permit block exemption.

As discussed in the proposed rule, if a mining operator on a previously undisturbed site contributes to a violation occurring on that site but originating from an unanticipated event or condition on an adjacent or nearby remining operation, and if the operator of the previously undisturbed site did not abate the violation, he would be permit blocked. On the other hand, if the operator of the previously undisturbed site did not contribute to the unabated violation occurring on his site, he would not be permit blocked.

OSM's proposed rule sought comments on this and other possible examples of interplay between remining operations and adjacent operations which needed to be explained in the final rulemaking. Two commenters responded. The first stressed that the operator of a previously undisturbed site should not be held responsible for any condition on his own site that originated from a nearby remining operation, whether the originating event

or condition is anticipated or not. OSM agrees that the liability of operators for events or conditions originating on a nearby remining site should not be a function of whether or not the originating event or condition was anticipated. As discussed above, an operator of a previously undisturbed site would be responsible for events or conditions on his site that originated from a nearby site only if his operation contributed to that event or condition.

The same commenter asserted that operators should not be held responsible for correcting conditions that are caused by or stem from existing abandoned mine lands. SMCRA, as amended by the Energy Policy Act, provides, under restricted circumstances, for an exemption to the permit block provisions of section 510(c) and for reduced periods of responsibility for successful revegetation. These amended SMCRA sections (510(e) and 515(b)(20)(B)) do not, however, provide exemption from other existing regulatory standards as the commenter would suggest. OSM's position on this issue is also consistent with the second commenter who correctly noted that an operator is responsible for meeting effluent limits where runoff from other sites is commingled with runoff from his own site.

c. Section 773.15(c)(13). A new final § 773.15(c)(13) will require the regulatory authority to make three findings in order to issue permits under new 30 CFR 785.25: (1) The permit application contains lands eligible for remining; (2) The permit application identifies potential environmental and safety problems reasonably anticipated to occur at the site; and (3) The permit application contains mitigation plans to address the identified potential environmental and safety problems in order to ensure that the required reclamation can be accomplished.

(i) Comparison of proposed and final § 773.15(c)(13). Final § 773.15(c)(13) differs from proposed paragraph (c)(13) in the following ways: Final paragraph (c)(13) does not contain the references to parts 779, 780, 783, and 784 found in the proposal. These parts are included implicitly in the phrase ''Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations'' contained in proposed and final § 785.25(b). The proposed reference to these Parts at § 773.15(c)(13) was therefore duplicative of § 785.25 provisions. The final rule also does not contain the proposed requirement that the regulatory authority set a threshold beyond which conditions or events arising subsequent to the issuance of the remining permit may be presumed to constitute unanticipated events or conditions for the purposes of § 773.15(f). As will be discussed later under the analysis for final rule § 785.25, the majority of the environmental, industry, and regulatory commenters strongly opposed the proposed threshold. In lieu of requiring the regulatory authority to set some threshold, OSM will instead at paragraph (c)(13)(ii) require the regulatory authority to make a permit finding, based on permit information required in new § 785.25(b)(1), that the application identifies the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site.

Final § 773.15(c)(13)(iii) requires the regulatory authority to make a finding based on the permit information required in new § 785.25(b)(2) that the application contains sufficient mitigation plans for each of the previously identified environmental or safety problems to ensure that the required reclamation can be accomplished. This required finding as to the sufficiency of the mitigation plans is expected to increase the likelihood that the targeted environmental or safety problems will be fully reclaimed by the operator. Such reclamation would not require a subsequent draw on the Abandoned Mine Reclamation funds and thus could extend the reach of these limited monies.

3. 30 CFR Part 785—Requirements for Permits for Special Categories of Mining

The final rule adds a new 30 CFR 785.25, Lands eligible for remining.

Final § 785.25 (a) identifies this section as containing the permitting requirements necessary for the regulatory authority to make a § 773.15(b)(4) determination. Paragraph (a) also requires that any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with the provisions in paragraphs (b) and (c).

Final § 785.25(b) prescribes that a § 785.25 permit application comply with all applicable 30 CFR subchapter G permitting requirements for surface coal mining and reclamation operations. Paragraph (b)(1) requires that the application identify potential environmental and safety problems at the proposed site related to past mining which could be reasonably anticipated to occur based on all available data, including visual observations at the site, a record review of past mining at the site, and sampling tailored to current site conditions. Paragraph (b)(2) requires that the application describe the mitigative measures which will be taken to ensure that the requisite reclamation of the previously identified environmental and safety problems can be achieved.

Final § 785.25(c) provides that the requirements of this section shall not apply after September 30, 2004.

(i) Comparison of proposed and final § 785.25. The final rule differs from proposed § 785.25 in the following ways: First, the language of proposed paragraph (a) applying this section to any person who conducts or intends to conduct a surface coal mining operation on lands eligible for remining has been replaced in final paragraph (a)(1) with more direct language obligating such persons to comply with this section's requirements. Final paragraph (a)(2) also includes new language to reflect the rule's reorganization from one in which the regulatory authority's section 510(e) permit block exemption determination was based on a threshold set by that authority in proposed § 773.15(c)(13) to one in which the permit block exemption determination is based foundationally on the site condition information contained in a § 785.25 permit application and the permit finding requirements of § 773.15(c)(13).

Reasonably Anticipated Problems

The proposed § 785.25(b)(1) requirement for an identification of all potential environmental and safety problems associated with the site has, in response to comments, been eliminated in favor of the final § 785.25(b)(1) which requires identification of all reasonably anticipated environmental and safety problems which might occur at the site. Proposed paragraph (b)(1) would have required an open-ended quantitative risk analysis. From the data gained from this analysis and the data provided under other specific permitting sections, the regulatory authority would have, under proposed § 773.15(c)(13), set a threshold beyond which subsequent conditions or events may be presumed to be unanticipated for the purposes of the section 510(e) permit block exemption.

Final § 785.25(b)(1) requires a due-diligence investigation by the applicant tailored to each remining site from which the applicant is expected to generate a list of environmental and safety problems related to past mining which could be reasonably anticipated to occur at the site. The due-diligence investigation requires a review of all available data including visual observations, a review of records

associated with past mining, and necessary environmental sampling. The list of problems will be the basis of the regulatory authority's finding in final § 773.15(c)(13) and any subsequent § 773.15(b)(4) permit block exemption determination.

Although the proposed rule's risk analysis/threshold approach may have proven to be the most protective of the environment in its determination of anticipated events or conditions, OSM's preamble to the proposed rule reflected the agency's reservation as to the practicability of its implementation. These reservations were confirmed by the weight of comment response.

Two commenters provided qualified endorsement of the proposed risk analysis/threshold approach. The first commenter supported that approach because it required consideration of the previous disturbed character of the land, which was felt to be lacking under existing regulations. In suggesting an alternative expression of probability, the commenter was, however, careful to exclude from consideration events or conditions which might be deemed highly unlikely to occur.

The second commenter was concerned that the proposed requirement to establish maximum impacts would dramatically increase the risk of permit block to the point where remining would not occur and could limit the flexibility of regulators to account for site-specific conditions. This commenter felt that restructuring the proposed rule's threshold should be based instead on considerations of events or conditions that could be ''reasonably foreseen based on available information'' and allowing for the use of ''best professional judgement by the applicant and regulator'' would significantly improve the proposed rule's ability to meet the intent of the Energy Policy Act to provide specific incentives for remining.

Three commenters, including environmental and industry associations, strongly opposed the risk analysis/threshold approach of proposed §§ 785.25(b)(1) and 773.15(c)(13). They characterized its components—the probability and maximum degree of impact analyses, the identification of all potential problems, and the setting of a threshold—all to be unrealistic, too costly and time-consuming, an invitation to litigation, and lacking readily-available supporting technical methodology for conducting the requisite undertakings. One of these commenters questioned the statutory basis for the proposal's reliance on the aforementioned component parts as creating an all-inclusive term seen as expanding the limited standards set by Congress for the term ''unanticipated event or condition.''

All three commenters represented that existing regulatory permitting requirements provided sound basis upon which to assess and characterize pre-mining site conditions. The commenter representing the industry association suggested that a ''good faith'' listing of potential problems could be made on the basis of such baseline information. The whole of the industry's comment seemed to indicate that this information must necessarily include sound site-specific data on hydrology, soils, geology, etc.

The commenter representing the environmental association also submitted that, based on visual inspection and proper sampling tailored to the site and a record review of prior mining at the site, potential problems could be reasonably anticipated. Such site-specific investigations were characterized as necessary for establishing a comprehensive, objective assessment of site conditions from which a reclamation plan could be developed and against which any later claims of ''unanticipated event'' could, in turn, be assessed.

In response to the objections posed by these commenters to the risk analysis/threshold approach of the proposed rule, the final rule will reflect many of the commenters' suggestions for an alternative approach for determining when an event or condition is unanticipated. Final § 785.25(b)(1) will require site-specific development of baseline data based on visual inspection, environmental sampling, and a review of records of past mining to identify potential problems related to prior mining activity at the site which could reasonably be anticipated to occur. A requirement for these site-specific investigations could be construed to exist already as part of the permanent program regulations. OSM believes, however, that the potential for environmental problems occurring is particularly high at remining sites. Therefore, these investigations have sufficient importance that they should be expressly required by rule as preconditions to all § 785.25 remining operations.

OSM submits that the final rule's approach of identifying ''reasonably anticipated'' potential problems will be as effective as the proposed rule's approach of identifying (all) potential problems in providing a level of protection commensurate with a reasonable expectation that certain environmental and safety problems might occur. The final rule's reliance upon more of reasonably anticipated standard for identifying potential problems will also substantially reduce the information gathering burden associated with the analyses that would have been required under the proposed rule.

Degree of Variance from Anticipated Problem

OSM intends that the final § 785.25(b)(1) identification of potential problems reasonably anticipated to occur will extend not only to an identification of the *type* of such problems but also the *degree* of such problems, *e.g.*, that AMD is anticipated at a rate of 150 gallons per minute (gpm).

The allowable degree of variance from an anticipated problem is an issue indirectly raised by associations representing both environmental and industry interests. The commenter representing the environmental association opposed the risk analyses required under the proposed rule. This commenter asserted that with adequate data collection, potential problems can be reasonably anticipated and there should be very few instances where an ''unanticipated'' event or condition occurs.

Such statement suggests, for instance, that if any AMD is identified as a potential problem, then the eventual amount or degree of AMD experienced is immaterial for the purposes of qualifying for the section 510(e) permit block exemption. All such experienced AMD, however large the amount, would be considered anticipated and the operator would not qualify for the exemption.

The industry association commenter also opposed the risk analyses required under the proposed rule, but addressed the issue of degree of unanticipated problem somewhat differently. This commenter focussed on the difficulties in accurately predicting the likelihood of potential problems occurring and the associated maximum degree of impact. Even with good baseline data, there appeared to be too many variables to accurately assess a potential problem's maximum degree of impact. This commenter's solution was for the applicant to provide a list of potential problems that it could in ''good faith'' identify. Any problem that then arose from the previous disturbed nature of the site, including AMD, despite the operator's substantial adherence to the permit, would be considered to be unanticipated.

Such statement suggests that if any AMD is identified as a potential

problem and it occurs despite the operator's substantial adhereance to its operation and reclamation plans, the actual amount or degree of the post-treatment problem is immaterial for the purposes of qualifying for the section 510(e) permit block exemption. All such AMD, however small the amount, would be considered unanticipated and the operator would qualify for the exemption.

OSM rejects both environmental and industry comments regarding the degree of problem anticipated and experienced at the remining site. Because the AMD problem is recognized as the largest deterrant to remining, and some AMD can be anticipated from many remining sites, the environmental approach would substantially narrow the remining inceptive which OSM believes Congress intended in providing the section 510(e) exemption. Conversely, the industry approach would substantially broaden the incentive beyond which OSM believes Congress intended for this exemption.

The final rule seeks to implement the ''(reasonably) anticipated event or condition'' language of section 510(e). The rule's reliance upon the permit information and permit finding requirements of §§ 785.25 and 773.15(c)(13) maps a middle course between the environmental and industry approaches and provides a flexibility which accounts for the realities of remining operations where environmental and safety problems may reasonably be anticipated only in terms of degrees or relative amounts.

Under the final rule it falls to the regulatory authority to determine whether the degree of problems experienced in excess of that which was originally anticipated and identified in the permit would qualify as unanticipated for the purposes of the section 510(e) exemption. For example, if on the basis of available baseline information required under existing permit application rules and the site-specific investigations required by new § 785.25, the operation and reclamation plans reasonably anticipate an AMD discharge of 150 gpm to occur with mitigation plans set forth to handle that amount, a later occurence of a discharge of 1500 gpm may reasonably be said to have not been contemplated by those plans and, therefore, qualifies as an unanticipated event or condition for the purposes of the § 773.15(b)(4) (section 510(e)) exemption. This fact-specific inquiry would be made by the regulatory authority on a case-by-case basis. Regardless of the level of discharge, the operator would, however, be responsible for abating any violation related to the discharge and providing appropriate treatment.

There can be no hard and fast rules for what degree of variance from the permit estimate reasonably qualifies as an unanticipated event or condition. The final rule recognizes that each site has its unique characteristics and must be investigated accordingly. The final decision as to whether an event or condition was unanticipated will be made by the regulatory authority conducting the § 773.15(b) permit review.

Required Mitigation Measures

Final § 785.25 differs from the proposed rule in that paragraph (b)(2) requires a description of the mitigation measures which will be taken to ensure that the reclamation required by the applicable requirements of the regulatory program can be met rather than the description required by proposed paragraph (b)(2) of how such measures will meet applicable performance standards. This change focuses the required description on ensuring that the applicant is prepared to reclaim the reasonably anticipated potential environmental and safety problems identified in paragraph (b)(1).

Phase-Out of Section 785.25 Requirements

Final § 785.25 also differs from the proposal in that a new paragraph (c) has been added providing that the requirements of that section shall not apply after September 30, 2004. The effect of this provision will be that no § 785.25 remining permits will be issued after September 30, 2004. This is consistent with OSM's interpretation of the Energy Policy Act amendments to SMCRA as allowing violations resulting from an unanticipated event or condition arising on lands eligible for remining under a permit issued before September 30, 2004, and any renewals thereof, to be eligible for the permit block exemption of section 510(e).

4. 30 CFR Part 816—Permanent Program Performance Standards-Surface Mining Activities and Part 817—Permanent Program Performance Standards-Underground Mining Activities

The final rule amends paragraphs (c)(2) and (c)(3) of §§ 816.116 and 817.116, Revegetation: Standards for Success, by adding paragraphs (c)(2)(ii) and (c)(3)(ii) which implement section 515(b)(20)(B) of SMCRA. Paragraph (c)(2) deals with areas receiving more than 26.0 inches of average annual precipitation. Final paragraph (c)(2)(i) is identical to former paragraph (c)(2), with the addition of a reference to the exception to the regular five-year revegetation responsibility period provided at final paragraph (c)(2)(ii) for lands eligible for remining included in permits issued before September 30, 2004, and any renewals thereof. Final paragraph (c)(2)(ii) reduces the revegetation responsibility period to two years for lands eligible for remining included in such permits. Final paragraph (c)(2)(ii) also provides that to the extent that the success standards for certain lands previously disturbed by mining are established by §§ 816/817.116(b), the lands shall equal or exceed those standards during the growing season of the last year of the responsibility period. Because OSM anticipates that in most cases the post-mining land use for lands eligible for remining will be as specified in paragraph (b)(5), final paragraph (c)(2)(ii) merely includes the paragraph (b)(5) success standards. This does not preclude the regulatory authority from prescribing paragraph (c)(2)(ii) two-year success standards when the post-mining lands use is grazing, crop, or pastureland.

Final paragraph (c)(3) relates to areas of less than 26.0 inches of annual average precipitation and incorporates language similar to paragraph (c)(2) except that the period of responsibility has been reduced from ten years to five years.

The changes in these periods of responsibility for revegetation are mandated by section 515(b)(20)(B) of SMCRA as amended by section 2503(b) of the Energy Policy Act.

a. Comparison of proposed and final §§ 816.116 and 817.116. The format of the proposed rule apparently created some confusion for commenters with respect to distinguishing between the responsibility periods for revegetation and success standards for revegetation intended by the proposed rule for lands eligible for remining. The final rule seeks to clarify this situation for lands eligible for remining by placing the requirements for both responsibility periods for revegetation and success standards for revegetation in one paragraph, either (c)(2)(ii) for areas of more than 26.0 inches of average annual precipitation or (c)(3)(ii) for areas of 26.0 inches or less average annual precipitation.

Each of these paragraphs also contain the statement that if the success standards are established by paragraph (b)(5), then the lands eligible for remining shall equal or exceed these standards during the growing season of the last year of the responsibility period (paragraph (c)(2)(ii)) or of the last two

consecutive years of the responsibility period (paragraph (c)(3)(ii)). This reformatting change should make clear that the final rule is not intended to vary the success standards for revegetation of the existing rules.

Phase-In for Reduced Revegetation Responsibility Periods

Final §§ 816/817.116 (c)(2)(ii) and (c)(3)(ii) tie the reduced revegetation responsibility periods for lands eligible for remining to permits issued before September 30, 2004, and any renewals thereof. Because the statutory language of section 515(b)(20)(B) does not contain the triggering language of section 510(e): ''[a]fter the date of enactment of this subsection,'' OSM is interpreting final §§ 816/817.116(c)(2)(ii) and (c)(3)(ii) as requiring existing permits to obtain a permit revision to qualify for the rule's reduced revegetation responsibility periods. This permit revision would require a § 773.13(c)(13)(i) finding by the regulatory authority that the permit covers lands eligible for remining. Permits issued under new § 785.25 would also require a similar § 773.13(c)(13)(i) finding. Whether for existing permits or those issued under § 785.25, the reduced revegetation responsibility periods would apply only to lands within the permit found to be eligible for remining.

OSM is aware that, for existing operations on lands eligible for remining which have ceased mining and have already begun reclamation, the above interpretation of final §§ 816/817.116 would allow for reduced revegetation responsibility periods without operating as an incentive for future remining. This interpretation is, however, permissible under the language of section 515(b)(20)(B), whose only qualification for the reduced revegetation responsibility periods is that the affected land be eligible for remining, and is structurally consistent with OSM's implementation of the Energy Policy Act's other remining provision at section 510(e) (§ 773.15.(b)(4)(i)).

Phase-Out for Reduced Revegetation Responsibility Periods

Because final §§ 816/817.116(c)(2)(ii) and (c)(3)(ii) tie the reduced revegetation responsibility periods to remining permits issued before September 30, 2004, or any renewals thereof, the reduced revegetation responsibility provisions will not cease to be operative on September 30, 2004, for permits issued before that date as would have been the case under the proposed rule. Under the final rule, as long as the permit was issued before September 30, 2004, the reduced revegetation responsibility periods could extend beyond that date through the prescribed duration of the remining permit or any renewals thereof.

This change was made in response to commenters who recommended that the period of responsibility should apply to any remining permit issued prior to September 30, 2004, even if the mining and/or period of responsibility extended past that date.

Both the reduced revegetation responsibility period provisions of section 515(b)(20)(B) and the permit block exemption provisions of section 510(e) are tied to lands eligible for remining. The same provision in section 510(e) terminates the authority for both sections on September 30, 2004. This termination provision suggests that Congress intended sections 510(e) and 515(b)(20)(B) to operate in tandem, providing structurally consistent incentives for remining operations on lands eligible for remining.

Interpreting the phase-out provisions of section 515(b)(20)(B) as ending the reduced responsibility periods on September 30, 2004, would, for remining operations existing on that date, render the shortened responsibility period meaningless. A reduced two or five-year period which runs past September 30, 2004, would be transformed on October 1, 2004, into a five and ten-year period. Thus no relief would be afforded operations who would otherwise rely upon that statutory provision. Such an interpretation would, particularly for potential remining operations in the arid West and less so for those in the East, provide severely limited incentive for remining. For instance, assuming one year would be spent permit processing, one-half a year for preparing the site, one and one-half years for actual remining, seven years to satisfy the five-year responsibility period resulting in bond release, a Western operator would then have had to have begun the permitting process in September of 1994 to have availed himself of a section 515(b)(20)(B) incentive if that incentive ended on September 30, 2004. If this hypothetical remining schedule were in any way delayed, the operator would run the risk of exceeding the 2004 barrier and being held to the standard ten-year responsibility period.

Rather than such an interpretation, OSM interprets consistently the permit block exemption of section 510(e) and the reduced responsibility provisions of section 515(b)(20)(B) by tying both to a remining permit issued before September 30, 2004, or any renewals thereof. In other words, the reduced responsibility period can extend beyond that date if the permit is issued before September 30, 2004.

One commenter correctly noted that the Energy Policy Act amendments to section 515(b)(20) ''abridged the duration of the period of responsibility, but did not alter the provisions relating to demonstrating achievement of the revegetation standards.'' On the other hand, several commenters suggested that OSM incorrectly interpreted the requirements of the Energy Policy Act in the proposal with regard to what the commenters referred to as ''success standards'' for revegetation. Another commenter asked whether ''both ground cover and productivity must meet standards for both years of the two-year maintenance period * * *.''

In response to both groups of comments, OSM stresses that the Energy Policy Act only reduces the ''periods of responsibility'' for revegetation from five to two years for areas of more than 26.0 inches of average annual precipitation and from ten to five years for areas of 26.0 inches or less average annual precipitation. The Energy Policy Act amendments to SMCRA do not prescribe any changes to revegetation standards, success standards, or productivity standards. All of these standards are unaffected by both the proposed and final rule. Thus, in the proposal as well as the final rule, OSM has adopted the success standards of the existing rules. OSM recognizes that the success standard applicable to remining sites will likely be that of existing 30 CFR 816.116(b)(5) and 817.116(b)(5).

Several commenters noted two editorial problems at §§ 816/817.116(c)(2) of the proposal: (1) Remining was misspelled; and (2) The word ''not'' was inadvertently omitted. The text has been corrected to read ''In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than: * * * (ii) Two full years for lands eligible for remining * * *.''

5. Other Comments

One commenter stated that parts 816 and 817 should require that rivers and streams within 20 miles of a remining site be capable of sustaining fish populations and that wetlands destroyed during remining must be replaced and added to. These comments go well beyond the proposed rule and are not accepted.

Two commenters recommended that the final rule provide for a date-certain bond release. One commenter stated that for operators with previous

reclamation success on remined lands there would be little additional risk for bond releases tied to time versus bond releases tied to success standards. The other commenter stated that H.R. 4053, a predecessor to the Energy Policy Act, contained language relating to ''date-certain release of an operator's bond'' and this language established requisite Congressional intent in the Energy Policy Act for a date-certain bond release. This language was not, however, carried forward into H.R. 4381 (1992), H.R. 776 (1992), or the Energy Policy Act. No provisions in the Energy Policy Act can be construed to authorize a date-certain bond release and OSM rejects this recommendation.

One commenter recommended that adoption of final rules should be delayed until all aspects of incentives dealing with abandoned coal refuse sites have been worked out. The incentives and requirements for removal and/or reprocessing of material at abandoned coal refuse sites are mandated by section 2503(e) of the Energy Policy Act and are being developed under a separate rulemaking. The statutory authority and the subject matter for both the coal refuse and the current rulemaking are sufficiently distinct and independent of each other so that there is no need nor advantage gained by delaying this rule until resolution of all coal refuse issues.

Another commenter suggested the use of negotiated compliance schedules to address abatement of unanticipated events prior to issuing a violation. This suggested procedure was not included in the proposal and, therefore, is beyond the scope of this rulemaking.

Several commenters recommended inclusion in the final rule of additional incentives which they felt would encourage remining. The commenters provided no legal basis for the following recommendations: (1) Creating minimum requirements for information on environmental resources. This is based on the commenter's assertion that remining operations are intended to mitigate or correct adverse effects of mining while operations on previously undisturbed areas are intended to prevent adverse effects; (2) Promulgating a new standard that would encourage the most environmentally effective use of spoil as opposed to current standards which require spoil to be used for highwall elimination as a first priority; (3) Providing a bonding advantage for remining operations; (4) Reducing the potential for bond forfeiture resulting from unanticipated events or conditions by allowing the AML program and not the operator to be responsible for final abatement of preexisting conditions. OSM does not accept these comments. The recommended incentives were not included in the proposal and are beyond the scope of this rulemaking.

III. Procedural Matters

Federal Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq* and assigned clearance numbers 1029–0040 and 1029–0041.

Executive Order 12778; Civil Justice Reform Certification

This rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this final rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule would have the same preemptive effect as other standards adopted pursuant to SMCRA. To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's rules. Ordinarily, any State law that is inconsistent with, or that would preclude implementation of a new Federal rule, would be subject to preemption under SMCRA section 505 and implementing regulations at 30 CFR 730.11. However, any State law which provides for more stringent land use and environmental controls and regulation of coal exploration and surface mining and reclamation operations than do the provisions of the Act and any rules issued pursuant thereto, shall not be construed as inconsistent with those rules. Because the current amendments to SMCRA contained in the Energy Policy Act are intended to ease certain requirements of the Act, these rules will not preempt more stringent State laws.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the implementation of SMCRA, as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule implements portions of the Energy Policy Act that were effective on October 24, 1992. Although this rule may be considered retroactive to the extent it covers actions occurring October 24, 1992, the Energy Policy Act requires such effects. OSM also recognizes that the rule may allow revisions to existing permits to change revegetation responsibility periods. This impact was explained above.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Regulatory Flexibility Act

The Department of the Interior has determined that the final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This determination is based on the findings that the regulatory

additions in the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign/based enterprises in domestic or export markets.

Executive Order 12866

This final rule has been reviewed under Executive Order 12866.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) of this final rule and has made a finding that it will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA and finding of no significant impact are on file in the OSM Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC.

Author

The principal author of this final rule is: Douglas J. Growitz, P.G., Hydrologist, Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, Room 110 SIB, 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: 202–208–2561.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 773

Administrative practice and procedure, Surface mining, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Dated: October 11, 1995.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Accordingly, 30 CFR parts 701, 773, 785, 816 and 817 are amended as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and Pub. L. 102–486.

2. Section 701.5 is amended by adding alphabetically definitions of ''lands eligible for remining'' and ''unanticipated event or condition'' as follows:

§ 701.5 Definitions.

* * * * *

Lands eligible for remining means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Act.

* * * * *

Unanticipated event or condition, as used in § 773.15 of this chapter, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining and was not contemplated by the applicable permit.

* * * * *

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

3. The authority citation for part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended, Pub. L. 100–34; 16 U.S.C. 470 *et seq.*; 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 661 *et seq.*; 16 U.S.C. 703 *et seq.*; 16 U.S.C. 668a; 16 U.S.C. 469 *et seq.*; 16 U.S.C. 470aa *et seq.*; and Pub. L. 102–486.

4. Section 773.15 is amended by adding new paragraphs (b)(4) and (c)(13) to read as follows:

§ 773.15 Review of permit applications.

(b) * * *

(4)(i) Subsequent to October 24, 1992, the prohibitions of paragraph (b) of this section regarding the issuance of a new permit shall not apply to any violation that:

(A) Occurs after that date;

(B) Is unabated; and

(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:

(*1*) Issued before September 30, 2004, or any renewals thereof; and

(*2*) Held by the person making application for the new permit.

(ii) For permits issued under § 785.25 of this chapter, an event or condition shall be presumed to be unanticipated for the purposes of this paragraph if it:

(A) Arose after permit issuance;

(B) Was related to prior mining; and

(C) Was not identified in the permit.

(c) * * *

(13) For permits to be issued under § 785.25 of this chapter, the permit application must contain:

(i) Lands eligible for remining;

(ii) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(iii) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

5. The authority citation for part 785 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and Pub. L. 102–486.

6. Section 785.25 is added to read as follows:

§ 785.25 Lands eligible for remining.

(a) This section contains permitting requirements to implement § 773.15(b)(4). Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this section.

(b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall—

(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions.

(2) With regard to potential environmental and safety problems referred to in paragraph (b)(1) of this section, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

(c) The requirements of this section shall not apply after September 30, 2004.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

7. The authority citation for part 816 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; sec 115 of Pub. L. 98–146, 30 U.S.C. 1257; Pub. L. 100–34; and Pub. L. 102–486.

8. Section 816.116 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 816.116 Revegetation: Standards for success.

* * * * *

(c) * * *

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than:

(i) Five full years, except as provided in paragraph (c)(2)(ii) of this section. The vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(i) Ten full years, except as provided in paragraph (c)(3)(ii) below. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

9. The authority citation for part 817 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; Pub. L. 100–34; and Pub. L. 102–486.

10. Section 817.116 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 817.116 Revegetation: Standards for success.

* * * * *

(c) * * *

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than:

(i) Five full years, except as provided in paragraph (c)(2)(ii) of this section. The vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any 2 years of the responsibility period, except the first year. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(ii) Two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than:

(i) Ten full years, except as provided in paragraph (c)(3)(ii) of this section. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

(ii) Five full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. To the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing seasons of the last two consecutive years of the responsibility period.

* * * * *

[FR Doc. 95–28862 Filed 11–24–95; 8:45 am]

BILLING CODE 4310–05–M

Federal Register

Monday
November 27, 1995

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 1

Definitions of Special Use Airspace; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1

[Docket No. 25767; Notice No. 95–16]

RIN 2120–AF92

Definitions of Special Use Airspace

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Federal Aviation Regulations by adding the definitions of the various forms of special use airspace. Several categories of special use airspace currently are defined other than in the Regulations. This proposed action is needed to consolidate and define those categories in a single part, including the definitions of warning area and non-regulatory warning area found in Special Federal Aviation Regulation (SFAR) No. 53.

DATES: Comments must be received on or before December 27, 1995.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 25767, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the following Internet address: mprmcmts@mail.hq.faa.gov. Comments delivered must be marked Docket No. 25767. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the rule making process by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before acting on this proposed rulemaking. The proposals contained in this notice may be changed considering comments received. All comments received 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 substantive public contact with FAA personnel concerned with this rule making will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 25767. The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed in a mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA has determined that for purposes of clarification and conformity, it would be appropriate to include in part 1, Definitions and Abbreviations, the definitions of all categories of special use airspace. Special use airspace is defined in 14 CFR Section 73.3(a) as airspace of defined dimensions wherein activities must be confined because of their nature, ow wherein limitations are imposed upon aircraft operations that are not a part of those activities, or both. With the exception of ''warning area,'' the definitions proposed are the same definitions provided for these categories of airspace in the Aeronautical Information Manual and in FAA Order 7400.2, Procedures for Handling Airspace Matters. The codification of these currently accepted definitions into part 1 does not in any way affect the provisions that apply to these areas that are contained in parts 73 and 91. Nor does the inclusion of the definitions in part 1 impose any new operating restrictions.

In addition, this notice proposes to redefine the term ''warning area,'' by consolidating the definitions of ''warning area'' and ''non-regulatory warning area'' found in SFAR 53 and codify that term in part 1. Warning areas are defined in SFAR 53 as airspace of defined dimensions, extending from 3 to 12 nautical miles from the coast of this United States, which contain activity that may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger. The FAA proposes to consolidate this definition with the definition of non-regulatory warning area found in SFAR 53. A non-regulatory warning area is an airspace of defined dimensions designated over *international* waters that contains activity which may be hazardous to nonparticipating aircraft. The FAA believes that combining the definition of warning area with the definition of a non-regulatory warning area into a single definition is appropriate since the procedures that apply to these two areas are the same.

Presidential Proclamation No. 5928, issued on December 27, 1988, extended the sovereignty of the United States, for international purposes, over the territorial seas from 3 to 12 nautical miles from the coast of the United States (including its territories). Prior to Presidential Proclamation No. 5928, warning areas were only designated in international waters. SFAR 53, promulgated in response to Proclamation No. 5928, designated warning areas in domestic airspace. This proposal would define a warning area as an area of airspace of defined dimension, extending from 3 nautical miles outward from the coast of the United States, that contains activity which may be hazardous to nonparticipating aircraft.

This proposal would not alter any of the existing warning areas. The FAA does not envision any future additional warning areas or enlargement of the existing warning areas in domestic airspace. If new airspace areas are needed in domestic airspace, the FAA will work with the proponent to establish the appropriate domestic special use airspace, i.e. military operations are (MOA), Restricted area, or Prohibited area.

The Proposal

The FAA is proposing to amend 14 CFR part 1, Definitions and Abbreviations, to include the definitions of all types of special use airspace.

Except for ''warning areas,'' the proposed definitions are the same definitions of the categories of special use airspace found in the Aeronautical Information Manual and FAA Order 7400.2, Procedures for Handling Airspace Matters and are familiar to and accepted by the flying community. The inclusion of these definitions in part 1 does not affect any provision currently contained in parts 73 and 91. Further, the inclusion of these definitions does not add any requirement or operating restriction to these categories of special use airspace. This proposal also codifies the definition of warning area. As noted above, the proposed definition of warning area would consolidate the definitions in SFAR 53 into a single definition of a warning area that applies to domestic airspace located from 3 to 12 nautical miles from the U.S. coast, as well as international airspace beyond the 12 nautical mile boundary from the coast.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation organization Standards and Recommended Practices (SARP) to the maximum extent practicable. A difference will be filed with the International Civil Aviation Organization.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed regulation.

Regulatory Evaluation

This proposed regulation does not alter the provision of air traffic control (ATC) services, nor does it have an impact on ATC system users. This proposed regulation merely adds a section of currently accepted definitions in 14 CFR part 1 without making any substantive revision to parts 73 and 91. Accordingly, because the costs of the rule are minimal or non-existent, a formal regulatory evaluation has not been prepared. Nevertheless, the FAA seeks comments from the public on any possible economic impact of this notice.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have a significant economic impact on a substantial number of small entities.

The proposed regulation will not alter the provision of air traffic control (ATC) services, nor will it have an impact on ATC system users. Hence, the proposed regulation will not impose a significant cost on a substantial number of small entities.

Federalism Implications

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

International Trade Impact Assessment

The proposal would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services to the United States. This proposal would not impose costs on either U.S. or foreign operators. Therefore, a competitive trade disadvantage would not be incurred by either U.S. operators abroad or foreign operators in the United States.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this proposed regulation is not a ''significant regulatory action'' under Executive Order 12866. In addition, the FAA certifies that this proposed regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposed regulation is not considered significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An Initial Regulatory Flexibility Determination and International Impact Assessment are set out above. Because the economic impact of this proposal are minimal or non-existent, no formal regulatory evaluation has been prepared.

List of Subjects in 14 CFR Part 1

Air transportation, Federal Aviation Administration.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 1 as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Section 1.1 is amended by adding the following definitions to read as follows:

* * * * *

§ 1.1 General definitions.

* * * * *

Alert Area. An alert area is established to inform pilots of a specific area wherein a high volume of pilot training or an unusual type of aeronautical activity is conducted.

* * * * *

Controlled Firing Area. A controlled firing area is established to contain activities, which if not conducted in a controlled environment, would be hazardous to nonparticipating aircraft.

* * * * *

Military Operations Area. A military operations area (MOA) is airspace established outside Class A airspace to separate or segregate certain nonhazardous military activities from IFR traffic and to identify for VFR traffic where these activities are conducted.

* * * * *

Prohibited Area. A prohibited area is airspace designated under part 73 within which no person may operate an aircraft without the permission of the using agency.

* * * * *

Restricted Area. A restricted area is airspace designated under Part 73 within which the flight of aircraft, while not wholly prohibited, is subject to restriction.

* * * * *

Warning Area. A warning area is airspace of defined dimensions, extending from 3 nautical miles outward from the coast of the United States, that contains activity that may be hazardous to nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger. A warning area may be located over domestic or international waters or both.

* * * * *

Issued in Washington, DC on November 20, 1995.

Harold W. Becker,

Acting Program Director for Air Traffic Rules and Procedures.

[FR Doc. 95–28844 Filed 11–24–95; 8:45 am]

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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1, 2 (2 Reserved)	(869–026–00001–8)	$5.00	Jan. 1, 1995
3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

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[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.