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Monday
April 1, 1996

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Presidential Documents

Title 3—

The President

Proclamation 6874 of March 27, 1996

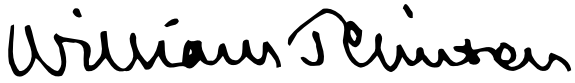
Death of Edmund Sixtus Muskie

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of Edmund Sixtus Muskie, one of our Nation's foremost public servants, I hereby order, by the authority vested in me as President of the United States of America by section 175 of title 36 of the United States Code, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions on Saturday, March 30, 1996. I also direct that the flag shall be flown at half-staff on that day at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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



[FR Doc. 96–8031
Filed 3–29–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

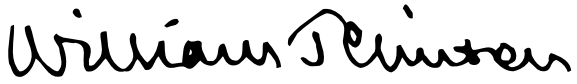
Presidential Determination No. 96–19 of March 19, 1996

Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107)

Memorandum for the Secretary of State

Pursuant to section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107), I hereby certify that withholding form international financial institutions and other international organizations and programs funds appropriated or otherwise made available pursuant to that Act is contrary to the national interest.

You are authorized and directed to publish this determination in the Federal Register.



THE WHITE HOUSE,
Washington, March 19, 1996.

[FR Doc. 96–8020
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Billing code 4710–10–M

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 96–015–1]

Brucellosis; Approved Brucella Vaccines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations to remove the requirement that an approved brucella vaccine be, among other things, a *Brucella abortus* Strain 19 product. This change allows for the use of vaccines that have been developed using strains of *Brucella* other than *Brucella abortus* Strain 19. Specifically, this action allows the RB51 brucella vaccine, which was licensed for use in cattle by the U.S. Department of Agriculture in February 1996, to be used in the cooperative State/Federal brucellosis eradication program.

DATES: Interim rule effective March 26, 1996. Consideration will be given only to comments received on or before May 31, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–015–1, 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. 96–015–1. 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 on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Cattle Diseases and Surveillance Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1228, (301) 734–7708; E-mail: mgilsdorf@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella.* In its principal animal hosts, brucellosis is characterized by abortion and impaired fertility.

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of *Brucella abortus* infection present and the general effectiveness of the brucellosis control and eradication program conducted in the State or area. The classifications are Class Free, Class A, Class B, and Class C; States or areas that do not meet the minimum standards for Class C may be placed under Federal quarantine.

Through a cooperative State and Federal effort, the United States is now approaching total eradication of the field strain *Brucella abortus* in domestic cattle and bison herds. As of February 29, 1996, there were only 50 known affected cattle and bison herds, and the U.S. Department of Agriculture (USDA) had declared 34 States, Puerto Rico, and the U.S. Virgin Islands free of the disease.

One element of the cooperative State/Federal brucellosis eradication effort is the use of approved Brucella vaccines on female cattle and female bison to protect those animals against the disease. The current definition of *approved Brucella vaccine* in § 78.1 of the regulations specifies that such a vaccine must be a *Brucella abortus* Strain 19 product approved by, and produced under license of, the USDA for injection into cattle and bison to enhance their resistance to brucellosis. When that definition was written, *Brucella abortus* Strain 19 was the only strain of *Brucella* being used to produce Brucella vaccine for cattle and bison. More recently, however, research conducted by the USDA and other public and private entities has yielded promising results with vaccines that are being developed using strains of *Brucella* other than *Brucella abortus* Strain 19. In February 1996, the USDA licensed one of those new vaccines, designated RB51, for use in cattle; its licensing for use in bison is expected in the near future, pending completion of ongoing tests.

Although RB51 has been licensed and approved for use in cattle, the reference to *Brucella abortus* Strain 19 products prevents RB51, and any vaccines developed in the future from strains of *Brucella* other than *Brucella abortus* Strain 19, from meeting the definition of *approved Brucella vaccine.* Therefore, in order to eliminate that obstacle, we have removed the reference to *Brucella abortus* Strain 19 from the definition of *approved Brucella vaccine;* the regulations now require that the vaccine be a *Brucella* product without specifying a particular strain. Additionally, the definition states that an *approved Brucella vaccine* must be approved and licensed for injection into cattle and bison; as noted in the previous paragraph, RB51 has been licensed and approved for use in cattle before being licensed and approved for bison. To allow for the immediate use of RB51 in cattle, we are further amending the definition of *approved Brucella vaccine* to allow the licensing and approval to apply to a vaccine's injection into ''cattle or bison,'' rather than the more restrictive ''cattle and bison.'' Neither of these changes affects any currently licensed and approved Brucella vaccines, and the regulations still require that any *approved Brucella vaccine* must meet the USDA's approval and licensing requirements.

Brucella abortus Strain 19 Brucella vaccines cause vaccinated animals to produce antibodies that are indistinguishable on standard diagnostic tests from the antibodies produced by animals infected with brucellosis. However, the RB51 vaccine, and other vaccines produced from strains of *Brucella* other than *Brucella abortus* Strain 19 that may attain approved Brucella vaccine status in the future, do not produce those interfering antibody titers. Because of this difference, we have amended the definition of *official test* in several places to distinguish between cattle and bison vaccinated with a *Brucella abortus* Strain 19 Brucella vaccine and

cattle and bison vaccinated with approved Brucella vaccines produced from strains of *Brucella* other than *Brucella abortus* Strain 19. Specifically, in the definition of *official test* we have amended the paragraphs regarding the standard tube test or standard plate test (paragraph (a)(2)), the manual complement-fixation test (paragraph (a)(3)), the technicon automated complement-fixation test (paragraph (a)(4)), and the rivanol test (paragraph (a)(5)) by listing the agglutination reactions for classifying official vaccinates that have been vaccinated with approved Brucella vaccines produced from strains of *Brucella* other than *Brucella abortus* Strain 19. The agglutination reactions we have added are, for each test, the same as those listed for cattle and bison that are not official vaccinates, since approved Brucella vaccines produced from strains of *Brucella* other than *Brucella abortus* Strain 19 will not cause vaccinated cattle or bison to produce antibody titers. The existing agglutination reactions listed for official vaccinates have not been changed, but the regulations now specify that those reactions are for official vaccinates that have been vaccinated with a *Brucella abortus* Strain 19 approved Brucella vaccine.

To clear the way for the immediate use of RB51, we are also amending two other definitions, i.e., those for *official adult vaccinate* and *official calfhood vaccinate.* Each of those definitions contains a reference to a specific dosage of vaccine to be used in vaccinating female cattle and female bison; however, those dosages are appropriate for *Brucella abortus* Strain 19 vaccines only. Therefore, we are amending those definitions to specify that the dosage indicated is for *Brucella abortus* Strain 19 vaccines only, and that the dosage for other vaccines will be the dosage indicated on the vaccine's label instructions.

In a final rule published in the Federal Register on September 12, 1986 (51 FR 32574–32600, Docket No. 85–132), the specified dosages of Brucella vaccine for cattle and bison adults and calves were changed. To accommodate the owners of cattle and bison that had been vaccinated using the old dosage, the definitions for *official adult vaccinate* and *official calfhood vaccinate* provided that cattle or bison vaccinated prior to December 31, 1984, using the old dosage would still be considered to be official adult or calfhood vaccinates. It is unlikely that any cattle or bison herds in the United States contain cattle or bison vaccinated with the old dosage over 11 years ago, so we have removed that provision from the definitions for *official adult vaccinate* and *official calfhood vaccinate.*

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. This rule allows the U.S. cattle industry to use the RB51 brucella vaccine, which was licensed by the USDA for use in February 1996, to vaccinate the spring crop of calves before the calves are turned out on summer pastures, which is especially important in high-risk areas where the calves may be exposed to infected animals. The U.S. cattle industry and Federal and State animal health agencies will benefit economically from using the new vaccine because the RB51 vaccine does not cause vaccinated animals to produce interfering antibody titers on diagnostic tests, so the need for traceback investigations will be significantly reduced.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

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.

Currently available *Brucella abortus* Strain 19 brucella vaccines cause vaccinated animals to produce antibodies that are indistinguishable on standard diagnostic tests from the antibodies produced by animals infected with brucellosis. Because of this, State or Federal animal health personnel must trace those animals to their herds of origin to investigate whether or not the herd is actually affected with brucellosis. This rule allows for the use of a new brucella vaccine that will not cause vaccinated cattle to produce those interfering antibody titers. This will save the cattle industry and Federal and State animal health authorities the expense of tracing animals with vaccination titers. This rule, therefore, is expected to have a favorable economic impact. The need to make this rule effective in time for U.S. cattle raisers to use RB51 to vaccinate the spring crop of calves before the calves are turned out for summer pasture makes timely compliance with sections 603 and 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. The final rule for this action will include an analysis of the economic impact of this rule on small entities and will address any comments we receive on the economic impact of the rule on small entities.

Executive Order 12372

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

Executive Order 12778

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

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended to read as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 78.1 is amended as follows:

a. By revising the definition of *Approved brucella vaccine* to read as set forth below.

b. In the definition of *official adult vaccinate,* by revising paragraph (a) to read as set forth below.

c. In the definition of *official calfhood vaccinate,* by revising paragraph (a) to read as set forth below.

d. By amending the definition of *official test* as follows:

i. In paragraph (a)(2), by revising the heading for the first table to read ''SPT OR STT CLASSIFICATION—OFFICIAL VACCINATES VACCINATED WITH A *Brucella abortus* STRAIN 19 APPROVED BRUCELLA VACCINE'' and by adding a new table immediately following the first table to read as set forth below.

ii. In paragraph (a)(3), the introductory text of paragraph (a)(3)(ii) is amended by adding the words ''vaccinated with a *Brucella abortus* Strain 19 approved brucella vaccine'' after the word ''vaccinates'', and a new paragraph (a)(3)(iii) is added to read as set forth below.

iii. In paragraph (a)(4), the introductory text of paragraph (a)(4)(ii) is amended by adding the words ''vaccinated with a *Brucella abortus* Strain 19 approved brucella vaccine'' after the word ''vaccinates'', and a new paragraph (a)(4)(iii) is added to read as set forth below.

iv. The introductory text of paragraph (a)(5)(ii) is amended by removing the words ''and official calfhood vaccinates'' and adding the words ''with a *Brucella abortus* Strain 19 approved brucella vaccine and official calfhood vaccinates vaccinated with a *Brucella abortus* Strain 19 approved brucella vaccine'' in their place.

v. The introductory text of paragraph (a)(5)(iii) is amended by adding the words ''with a *Brucella abortus* Strain 19 approved brucella vaccine'' immediately after the word ''vaccination''.

vi. A new paragraph (a)(5)(iv) is added to read as set forth below.

§ 78.1 Definitions.

* * * * *

Approved brucella vaccine. A *Brucella* product approved by and produced under license of the United States Department of Agriculture for injection into cattle or bison to enhance their resistance to brucellosis.

* * * * *

Official adult vaccinate. (a) Female cattle or female bison older than the specified ages defined for official calfhood vaccinate and vaccinated by an APHIS representative, State representative, or accredited veterinarian with a reduced dose approved brucella vaccine, diluted so as to contain at least 300 million and not more than 1 billion live cells per 2 mL dose of *Brucella abortus* Strain 19 vaccine or at the dosage indicated on the label instructions for other approved brucella vaccines, as part of a whole herd vaccination plan authorized jointly by the State animal health official and the Veterinarian in Charge; and

* * * * *

Official calfhood vaccinate. (a) Female cattle or female bison vaccinated while from 4 through 12 months of age by an APHIS representative, State representative, or accredited veterinarian with a reduced dose approved brucella vaccine containing at least 2.7 billion and not more than 10 billion live cells per 2 mL dose of *Brucella abortus* Strain 19 vaccine or at the dosage indicated on the label instructions for other approved brucella vaccines; and

* * * * *

Official test.

(a) * * *

(2) * * *

OFFICIAL VACCINATES VACCINATED WITH AN APPROVED BRUCELLA VACCINE OTHER THAN A BRUCELLA ABORTUS STRAIN 19 APPROVED BRUCELLA VACCINE

Titer			Classification
1:50	1:100	1:200	
—	—	—	Negative.
I	—	—	Suspect.
+	—	—	Do.
+	I	—	Do.
+	+	—	Reactor.
+	+	I	Do.
+	+	+	Do.

— No agglutination.
I Incomplete agglutination.
+ Complete agglutination.

* * * * *

(3) * * *

(iii) Official vaccinates vaccinated with an approved brucella vaccine other than a *Brucella abortus* Strain 19 approved brucella vaccine:

(A) Fifty percent fixation (2 plus) in a dilution of 1:20 or higher—brucellosis reactor;

(B) Fifty percent fixation (2 plus) in a dilution of 1:10 but less than 50 percent fixation (2 plus) in a dilution of 1:20—brucellosis suspect;

(C) Less than 50 percent fixation (2 plus) in a dilution of 1:10—brucellosis negative.

(4) * * *

(iv) Official vaccinates vaccinated with an approved brucella vaccine other than a *Brucella abortus* Strain 19 approved brucella vaccine:

(A) Fixation in a dilution of 1:10 or higher—brucellosis reactor;

(B) Fixation in a dilution of 1:5 but no fixation in a dilution of 1:10—brucellosis suspect;

(C) No fixation in a dilution of 1:5 or lower—brucellosis negative.

(5) * * *

(v) Official vaccinates vaccinated with an approved brucella vaccine other than a *Brucella abortus* Strain 19 approved brucella vaccine:

(A) Complete agglutination at a titer of 1:25 or higher—brucellosis reactor;

(B) Less than complete agglutination at a titer of 1:25—brucellosis negative.

* * * * *

Done in Washington, DC, this 26th day of March 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–7837 Filed 3–29–96; 8:45 am]

BILLING CODE 3410–34–P

9 CFR Part 92

[Docket No. 95–052–2]

Horses From Bermuda and the British Virgin Islands; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the importation of horses from Bermuda and the British Virgin Islands to remove the requirement that such horses be quarantined for not less than 7 days upon arrival in the United States. This action is warranted because Bermuda and the British Virgin Islands have reported no cases of Venezuelan equine encephalomyelitis (VEE), and it appears that horses imported from Bermuda and the British Virgin Islands with less than a 7-day quarantine would not pose a risk of transmitting VEE to horses in the United States.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, Suite 3B08, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–6479, or e-mail: jbowling@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, referred to below as the regulations, govern the importation into the United States of specified animals and animal products to prevent the introduction

into the United States of various animal diseases.

The regulations in § 92.308(a)(1) now require horses imported from all parts of the Western Hemisphere except Argentina, Canada, and Mexico to be quarantined for not less than 7 days upon arrival in the United States to prevent the introduction of Venezuelan equine encephalomyelitis (VEE). VEE is an equine viral disease, transmitted primarily by mosquitoes and other hematophagous (blood-feeding) insects, particularly flying insects, that results in a high mortality rate in animals infected with the disease. Although tests exist for the presence of VEE in horses, the tests currently available may yield positive results for horses that have been vaccinated for VEE but that are not otherwise affected with the disease. The most efficient method for initial identification of horses that may be infected with VEE is observation of the horses for clinical signs of the disease. A horse will usually exhibit signs of VEE within 2–5 days after contracting the disease. Seven days is considered the length of time necessary to ensure that any clinical signs of VEE manifest themselves.

On October 23, 1995, we published in the Federal Register (60 FR 54315–54316, Docket No. 95–052–1) a proposal to amend § 92.308(a)(1) of the regulations to exempt horses from Bermuda and the British Virgin Islands from the 7-day quarantine requirement. We also proposed to amend § 92.308(a)(1) of the regulations to specify that the purpose of this 7-day quarantine is to evaluate the horses for signs of VEE.

We solicited comments concerning our proposal for 60 days ending December 22, 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. 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 will exempt horses imported into the United States from Bermuda and the British Virgin Islands from the requirement for a 7-day quarantine upon arrival. This action appears unlikely to have any significant economic impact on U.S. entities.

The United States had a total population of 2,049,522 horses in 1992. There were 338,346 farms that kept horses. Over 98 percent of these farms had a market value of less than $500,000, making them small entities by Small Business Administration standards.

There is a negligible risk of horses from Bermuda and the British Virgin Islands introducing VEE into the United States because no cases of VEE have ever been reported in Bermuda and the British Virgin Islands, and, based on documentation submitted by the Governments of Bermuda and the British Virgin Islands, it appears that no horses in these countries are affected with VEE. In addition, we do not expect that this action will result in any increase in the small number of horses imported into the United States from Bermuda and the British Virgin Islands. The total horse population in Bermuda is about 1,000, and only about 10 horses per year are imported from Bermuda into the United States. There are only 50 to 100 horses in the British Virgin Islands, and only a few of those are expected to be imported into the United Sates, and then only for temporary stays for exhibitions and racing. Under these circumstances, the imported horses will have no impact on market prices.

The only parties that will benefit from this reduced restriction are the potential importers of horses from Bermuda and the British Virgin Islands and those who use the foreign horses in exhibition and racing. The benefit to them arises from the reduced number of days required for quarantine. At present, horses coming from Bermuda and the British Virgin Islands are required to be quarantined for 7 days, while horses from countries free of VEE and certain other equine diseases are quarantined for only about 3 days. After the effective date of this final rule, horses from Bermuda and the British Virgin Islands will spend approximately 4 fewer days in quarantine, saving approximately $427 per horse. Furthermore the reduction in the waiting period may induce more economic activity.

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

This rule contains no 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 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, 371.2(d).

2. In § 92.308, paragraph (a)(1) is revised to read as follows:

§ 92.308 Quarantine requirements.

(a) * * *

(1) Except as provided in §§ 92.317 and 92.324, and except with respect to horses from Argentina, Bermuda, and the British Virgin Islands, horses intended for importation from the Western Hemisphere shall be quarantined at a port designated in § 92.303 for not less than 7 days to be evaluated for signs of Venezuelan equine encephalomyelitis.

* * * * *

Done in Washington, DC, this 26th day of March 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–7838 Filed 3–29–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–45–AD; Amendment 39–9557; AD 96–07–08]

Airworthiness Directives; Airbus Model A320–111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111 series airplanes. This action requires modification of the splicing cap at nose forward Frame 8 by cold expansion of the fastener holes and installation of new oversize fasteners. This amendment is prompted by results of a full-scale fatigue test which revealed that fatigue cracking can initiate from these fastener holes. The actions specified in this AD are intended to prevent such fatigue cracking which, if not detected and corrected in a timely manner, could compromise the structural integrity of the fuselage and lead to rapid depressurization of the airplane.

DATES: Effective April 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 16, 1996.

Comments for inclusion in the Rules Docket must be received on or before May 31, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–45–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

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 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.

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: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111 series airplanes. The DGAC advises that the results of full-scale fatigue testing, which was conducted by the manufacturer, revealed that fatigue cracks can occur on the internal flange of Frame 8 (FR8) after 48,000 simulated flights. The fatigue cracking initiated at and emanated from the bolt holes in the splicing cap of nose forward FR8. If fatigue cracking in this area is not detected and corrected in a timely manner, the cracking could propagate and eventually the splicing could rupture. This would compromise the structural integrity of the fuselage, and could lead to rapid depressurization of the airplane.

Airbus has issued A320–53–1005, Revision 1, dated June 19, 1992, which describes procedures for modifying the splicing cap at nose forward FR8 by cold expansion of the 10 fastener holes and the installation of oversize fasteners. This modification will improve the fatigue life of this area and preclude the conditions associated with the development of the subject cracking. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 95–096–064(B), dated May 24, 1995, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent fatigue cracking in the FR8 splicing cap, which, if not detected and corrected in a timely manner, could compromise the structural integrity of the fuselage and lead to rapid depressurization of the airplane. This AD requires modification of the splicing cap at FR8. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Model A320–111 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 19 work hours to accomplish the required actions, at an average labor charge of $60 per work hour. Required parts would cost approximately $207 per airplane. Based on these figures, the cost impact of this AD would be $1,347 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–45–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–07–08 Airbus: Amendment 39–9557. Docket 96–NM–45–AD.

Applicability: Model A320–111 series airplanes; having manufacturer's serial number (MSN) 005, 006, 007, 008, 010, 011, and 012; 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 request approval for an alternative method of compliance in accordance with paragraph (b) 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 as indicated, unless accomplished previously.

To prevent fatigue cracking in the splicing cap at nose forward Frame 8, which could compromise the structural integrity of the fuselage and lead to rapid depressurization of the airplane, accomplish the following:

(a) Prior to the accumulation of 16,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later, modify the splicing cap at Frame 8 in accordance with Airbus Service Bulletin A320–53–1005, Revision 1, dated June 19, 1992.

Note 2: Modification the splicing cap at Frame 8 that was performed prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–53–1005, dated November 22, 1989, is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

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

(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 A320–53–1005, Revision 1, dated June 19, 1992, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3–27	1	June 19, 1992.
2	(Original)	November 22, 1989.

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 April 16, 1996.

Issued in Renton, Washington, on March 25, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–7664 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–128–AD; Amendment 39–9556; AD 96–07–07]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires an inspection to verify the proper position of ''door open'' placards on the inside of the main entrance door, and replacement with new placards appropriately positioned, if necessary. This amendment is prompted by a report that the ''door open'' placards on the inside of the main entrance door, as currently installed, may not be visible to passengers or flightcrew when the door handle is in the open position. The actions specified by this AD are intended to ensure that certain placards on the inside of the main entrance door are clearly visible and perform their intended function in the event of an emergency evacuation.

DATES: Effective May 1, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 1, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. 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: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: 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 Jetstream Model 4101 airplanes was published in the Federal Register on December 18, 1995 (60 FR 65036). That action proposed to require a one-time visual inspection to verify the proper position of certain placards on the inside of the main entrance door, and removal of the placard and installation a new placard, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the 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 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied 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 $1,500, or $60 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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–07–07 Jetstream Aircraft Limited: Amendment 39–9556. Docket 95–NM–128–AD.

Applicability: Model 4101 airplanes, constructors numbers 41004 through 41046 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 request approval for an alternative method of compliance in accordance with paragraph (b) 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 as indicated, unless accomplished previously.

To ensure that certain placards on the inside of the main entrance door are clearly visible and properly aligned, accomplish the following:

(a) Within 4 months after the effective date of this AD, perform a one-time visual inspection to verify the proper position of the door open placards on the inside of the main entrance door, in accordance with Jetstream Service Bulletin J41–11–007, dated May 10, 1995. If any placard is found to be improperly positioned, prior to further flight, remove the placard and install a new placard in the specified position, in accordance with the service bulletin.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The inspection, removal, and installation shall be done in accordance with Jetstream Service Bulletin J41–11–007, dated May 10, 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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. 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 May 1, 1996.

Issued in Renton, Washington, on March 25, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–7662 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 769

[Docket No. 960322091–6091–01]

RIN 0694–XX05

Restrictive Trade Practices or Boycotts

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) published a notice on February 1, 1995 (61 FR 3669) designed to clarify and update the foreign boycott provisions of the Export Administration Regulations (EAR). BXA is now issuing a final rule based on that notice.

Specifically, this rule amends the EAR by adding a new Supplement No. 17 to the foreign boycott provisions of the EAR (part 769). This Supplement states that it is the Department's position that, given the Hashemite Kingdom of Jordan's formal termination

of its participation in the Arab economic boycott of Israel on August 16, 1995, certain requests for information, action or agreement from Jordan which were considered boycott-related by implication now cannot be presumed boycott-related and thus would not be prohibited or reportable under the foreign boycott provisions of the EAR. In addition, Supplement No. 17 reminds U.S. persons that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the foreign boycott provisions of the EAR, irrespective of the country of origin.

EFFECTIVE DATE: This rule is effective April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Frederick S. Davidson, Esq., Compliance Policy Division, Office of Antiboycott Compliance, U.S. Department of Commerce, 202–482–2381.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

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

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

These collections have been approved by the Office of Management and Budget under control numbers 0694–0012 and 0694–0058. 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 unless that collection of information displays a currently valid OMB Control Number.

3. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 3(a) and 4(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

List of Subjects in 15 CFR part 769

Boycotts, Foreign trade, Reporting and recordkeeping requirements, Restrictive trade practices, Trade practices.

Accordingly, part 769 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 769A—[AMENDED]

1. The authority citation for 15 CFR part 769 is revised to read as follows:

Authority: Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994); and Notice of August 15, 1995, 60 FR 42767.

2. Part 769 currently in effect is amended by adding a new Supplement No. 17 to read as follows:

Supplement No. 17 To Part 769

Pursuant to Articles 5, 7, and 26 of the Treaty of Peace between the State of Israel and the Hashemite Kingdom of Jordan and implementing legislation enacted by Jordan, Jordan's participation in the Arab economic boycott of Israel was formally terminated on August 16, 1995.

On the basis of this action, it is the Department's position that certain requests for information, action or agreement from Jordan which were considered boycott-related by implication now cannot be presumed boycott-related and thus would not be prohibited or reportable under the regulations. For example, a request that an exporter certify that the vessel on which it is shipping its goods is eligible to enter Hashemite Kingdom of Jordan ports has been considered a boycott-related request that the exporter could not comply with because Jordan has had a boycott in force against Israel. Such a request from Jordan after August 16, 1995 would not be presumed boycott-related because the underlying boycott requirement/basis for the certification has been eliminated. Similarly, a U.S. company would not be prohibited from complying with a request received from Jordanian government officials to furnish the place of birth of employees the company is seeking to take to Jordan because there is no underlying boycott law or policy that would give rise to a presumption that the request was boycott-related.

U.S. persons are reminded that requests that are on their face boycott-related or that are for action obviously in furtherance or support of an unsanctioned foreign boycott are subject to the regulations, irrespective of the country of origin. For example, requests containing references to ''blacklisted companies'', ''Israel boycott list'', ''non-Israeli goods'' or other phrases or words indicating boycott purpose would be subject to the appropriate provisions of the Department's antiboycott regulations.

Dated: March 22, 1996.

John Despres,

Assistant Secretary for Export Enforcement.

[FR Doc. 96–7846 Filed 3–29–96; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

Food and Drugs; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to correct those portions that pertain to foods. This action is being taken to improve the accuracy of the regulations.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR Chapter I of Title 21 of the Code of Federal Regulations to correct certain portions that pertain to foods. These amendments include two minor redesignations. The first change is in § 173.69 *Chlorine dioxide* (21 CFR 173.69). When the regulation was issued on March 1, 1995 (60 FR 11899 at 11900), it was incorrectly placed in part 173, subpart A—Polymer Substances and Polymer Adjuvants for Food Treatment. The agency now recognizes that this regulation belongs more appropriately under part 173, subpart D—Specific Usage Additives. This regulation will be redesignated as § 173.300.

The second correction is in § 182.8458 *Manganese hypophosphite* (21 CFR 182.8458). When the list of nutrients was separated into part 182, subpart F—Dietary Supplements and subpart I—

Nutrients, this compound was incorrectly listed and numbered in subpart I—Nutrients. It should have been included with the other dietary supplements in subpart F. Both of these corrections are merely renumbering sections to more closely categorize them into the correct subpart.

In addition to these redesignations, FDA is making a number of other minor corrections including spelling errors, typographical errors, and inadvertent omissions.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

List of Subjects

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 114

Food packaging, Foods, Reporting and recordkeeping requirements.

21 CFR Part 136

Bakery products, Food grades and standards.

221 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

21 CFR Parts 173 and 180

Food additives.

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Parts 176, 177, and 178

Food additives, Food packaging.

21 CFR Part 179

Food additives, Food labeling, Food packaging, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

21 CFR Part 182

Food ingredients, Food packaging, Spices and flavorings.

21 CFR Part 184

Food ingredients.

21 CFR Part 186

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter 1 is amended as follows:

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

1. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 351, 354–361 of the Public Health Service Act (42 U.S.C. 262, 263b–264); 42 U.S.C. 4321, 4322; 40 CFR parts 1500–1508; E.O. 11514 as amended by E.O. 11991; E.O. 12114.

§ 25.22 [Amended]

2. Section 25.22 *Actions requiring preparation of an environmental assessment* is amended in paragraph (a) by removing the word ''oridinarily'' and adding in its place ''ordinarily''.

§ 25.24 [Amended]

3. Section 25.24 *Categorical exclusions* is amended in paragraph (b)(2) by removing the phrase ''studies for research'' and adding in its place ''studies or research''.

§ 25.30 [Amended]

4. Section 25.30 *Content and format* is amended in paragraph (a) by removing the words ''bureau, national'' and adding the word ''of'' after the word ''interpretation'' in the last line of this paragraph.

PART 114—ACIDIFIED FOODS

5. The authority citation for 21 CFR part 114 continues to read as follows:

Authority: Secs. 402, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 371, 374); sec. 361 of the Public Health Service Act (42 U.S.C. 264).

§ 114.3 [Amended]

6. Section 114.3 *Definitions* is amended in paragraph (b) by removing ''fo'' from the last line of the paragraph and adding in its place ''of''.

PART 136—BAKERY PRODUCTS

7. The authority citation for 21 CFR part 136 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 379e).

§ 136.115 [Amended]

8. Section 136.115 *Enriched bread, rolls, and buns* is amended in paragraph (a)(3) by removing the ''NOTE: * * *'' that follows the table.

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

11. The authority citation for 21 CFR part 172 continues to reads as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

§ 172.133 [Amended]

12. Section 172.133 *Dimethyl dicarbonate* is amended in paragraph (a)(2) by removing the phrase ''Division of Food and Color Additives,'' and by removing the mail code ''(HFF–334)'' and adding in its place ''(HFS–200)''.

§ 172.210 [Amended]

13. Section 172.210 *Coatings on fresh citrus fruit* is amended in the table in paragraph (b)(3) by removing the limitation listed for potassium persulfate and by adding ''Do'' in its place.

§ 172.515 [Amended]

14. Section 172.515 *Synthetic flavoring substances and adjuvants* is amended in paragraph (b) by removing ''Methyl 2-methylthiopropionate'' and adding in its place ''Methyl-3-methylthiopropionate''.

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

15. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

§ 173.300 [Redesignated from § 173.69]

16. Section 173.69 *Chlorine dioxide* is removed from subpart A and added to subpart D as newly redesignated § 173.300.

§ 173.310 [Amended]

17. Section 173.310 *Boiler water additives* is amended in the table in paragraph (c) under ''Substances'' by removing ''Sodium carboxy-methylcellulose'' and adding in its place ''Sodium carboxymethylcellulose''.

§ 173.357 [Amended]

18. Section 173.357 *Materials used as fixing agents in the immobilization of enzyme preparations* is amended in the table in paragraph (a)(2) in the entry for ''Polyethylenimine reaction product with 1,2-dichloroethane'' by removing the phrase ''Division of Food and Color Additives,'' and by removing the mail code ''(HFF–334)'' and adding in its place ''(HFS–200)''.

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

19. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

§ 175.320 [Amended]

20. Section 175.320 *Resinous and polymeric coatings for polyolefin films* is amended in the table in paragraph (b)(3)(i) under ''List of substances'' in both entries for ''Siloxanes and silicones'' by removing ''CAS Reg. Nos. 67762–94–1'' and adding in its place ''CAS Reg. Nos. 68083–19–2''.

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

21. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

§ 176.170 [Amended]

22. Section 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* is amended in paragraph (b)(2) under ''List of substances'' in both entries for ''Siloxanes and silicones'' by removing the ''CAS Reg. Nos. 67762–94–1'' and adding in its place ''CAS Reg. Nos. 68083–19–2''.

§ 176.210 [Amended]

23. Section 176.210 *Defoaming agents used in the manufacture of paper and paperboard* is amended in paragraph (d)(3) by removing ''Isopropylamine salt of dodecylbenzene suffonic'' and adding in its place ''Isopropylamine salt of dodecylbenzene sulfonic''.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

24. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

§ 177.1520 [Amended]

25. Section 177.1520 *Olefin polymers* is amended in the table in paragraph (b) under ''Substances'' in the entry for ''Petroleum hydrocarbon resins'' by removing the phrase ''3,000 cubic centimeters per second'' and adding in its place ''3,000 centipoise''.

§ 177.2600 [Amended]

26. Section 177.2600 *Rubber articles intended for repeated use* is amended in paragraph (c)(4)(i) under the entry for ''Hydrogenated butadiene/acrylonitrile copolymers'' by removing the phrase ''Division of Petition Control,'' and by removing the mail code ''(HFS–215)'' and adding in its place ''(HFS–200)''.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

27. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

§ 178.2010 [Amended]

28. Section 178.2010 *Antioxidants and/or stabilizers for polymers* is amended in the table in paragraph (b) under ''Substances'' in the entry for ''1,3,5-Trimethyl-2,4,6-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl) benzene'' by adding ''(CAS Reg. No. 1709–70–2)'' after the word ''benzene''.

§ 178.3297 [Amended]

29. Section 178.3297 *Colorants for polymers* is amended in the table in paragraph (e) under ''Limitations'' in the entry for ''2,2′-(2,5-Thiophenediyl)-bis'' by removing ''4 [Reserved]'' and adding in its place ''4. At levels not to exceed 0.01 percent by weight of polyoxymethylene complying with § 177.2480 of this chapter.''

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

30. The authority citation for 21 CFR part 179 continues to read as follows:

Authority: Secs. 201, 402, 403, 409, 703, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 373, 374).

§ 179.21 [Amended]

31. Section 179.21 *Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing* is amended in paragraph (b)(2)(ii) by removing the phrase ''1,000 rads'' and adding in its place ''10 grays'' and in paragraph (b)(2)(iii) by removing the phrase ''200 millirads'' and adding in its place ''2 milligrays''.

§ 179.45 [Amended]

32. Section 179.45 *Packaging materials for use during the irradiation of prepackaged foods* is amended in paragraph (b) by removing ''1 megarad'' and adding in its place ''10 kilograys'', in paragraph (b)(5) by removing ''50,000 rads'' and adding in its place ''500 grays'', and in paragraph (d) by removing ''6 megarads'' and adding in its place ''60 kilograys''.

PART 180—FOOD ADDITIVES PERMITTED IN FOOD OR IN CONTACT WITH FOOD ON AN INTERIM BASIS PENDING ADDITIONAL STUDY

33. The authority citation for 21 CFR part 180 continues to read as follows:

Authority: Secs. 201, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 343, 348, 371); sec. 301 of the Public Health Service Act (42 U.S.C. 241).

34. The heading for part 180 is revised to read as set forth above.

35. Section 180.22 *Acrylonitrile copolymers* is amended in paragraph (b) by removing the phrase ''Bureau of Foods,'' and adding the phrase ''Center for Food Safety and Applied Nutrition (HFS–200),'' before the phrase ''Food and Drug Administration'' the first time it appears, and in paragraphs (e) and (f)(1) by removing the phrase ''Food and Drug Administration, Center for Food Safety and Applied Nutrition, Division of Food and Color Additives (HFF-330)'' and adding in its place ''Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration''.

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

36. The authority citation for 21 CFR part 182 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

§ 182.10 [Amended]

37. Section 182.10 *Spices and other natural seasonings and flavorings* is amended in the table under ''Common name'' by removing the entry for ''All spice'' and adding in its place ''Allspice''.

§ 182.5484 [Redesignated from § 182.8458]

38. Section 182.8458 *Manganese hypophosphite* is removed from subpart I and added to subpart F as newly redesignated § 182.5484.

§ 182.5697 [Amended]

39. Section 182.5697 is amended in the section heading and in paragraph (a) by removing the term ''Riboflavin-5-phosphate'' and adding in its place ''Riboflavin-5′ phosphate.''

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

40. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

§ 184.1193 [Amended]

41. Section 184.1193 *Calcium chloride* is amended in paragraph (c) by removing ''§ 170.3(o)(2)'' the second time it appears and adding in its place ''§ 170.3(o)(20)''.

§ 184.1634 [Amended]

42. Section 184.1634 *Potassium iodide* is amended in paragraph (a) by removing ''and is salt'' and adding in its place ''and in salt''.

Dated: March 27, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–7883 Filed 3–29–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8212]

Limitations on Availability of Benefits; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 8212), which were published in the Federal Register Monday, July 11, 1988 (53 FR 26050), relating to the availability of optional forms of benefit.

EFFECTIVE DATE: July 11, 1988.

FOR FURTHER INFORMATION CONTACT: David Munroe, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction is under sections 401, and 411 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8212) contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

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

§ 1.401(a)–4 [Corrected]

Par. 2. Section 1.401(a)–4 is amended by removing paragraph (a)(2)(ii)(B) in ''A–2''.

Cynthia E. Grigsby,

Chief, Regulations Unit Assistant Chief Counsel (Corporate).

[FR Doc. 96–7770 Filed 3–29–96; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 1

[TD 8175]

Income Tax; Taxable Years Beginning After December 31, 1953; Limitations on Passive Activity Losses and Credits; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to temporary regulations (TD 8175), which were published in the Federal Register Thursday, February 25, 1988 (53 FR 5686), relating to the limitations on passive activity credits.

EFFECTIVE DATE: February 25, 1988.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter, (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these correction are under sections 469 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 8175) contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

§ 1.469–5T [Corrected]

Par. 2. In § 1.469–5T, paragraphs (d)(A) and (d)(B) are redesignated as paragraphs (d)(1) and (d)(2).

Cynthia E. Grigsby,

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

[FR Doc. 96–7655 Filed 3–29–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[TD 8657]

RIN 1545–AQ58

Regulations on Effectively Connected Income and the Branch Profits Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final Income Tax Regulations (TD 8657), which were published in the Federal Register on Friday, March 8, 1996 (61 FR 9336), relating to the determination of effectively connected income; and final and temporary Income Tax Regulations relating to the branch-level interest tax, respectively.

EFFECTIVE DATE: June 6, 1996.

FOR FURTHER INFORMATION CONTACT: Gwendolyn A. Stanley, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 861, 864, 871, 884, and 897 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8657) contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 8657) which are the subject of FR Doc. 96–5261 is corrected as follows:

§ 1.884–1 [Corrected]

1. On page 9338, column 3, in amendatory instruction 11.b. under ''Par. 5.'', § 1.884–1(e)(5) *Example 1*, the first entry in the table is corrected to read as follows:

Sentence	Remove	Add
First, third, and fifth sentence	1993	1997

Sentence		Remove	Add
*	*	*	*

§ 1.884–5 [Corrected]

2. On page 9343, column 1, § 1.884–5(e)(4)(ii), line 7, the language ''country in its country of residence'' is corrected to read ''corporation in its country of residence''.

§ 1.897–1 [Corrected]

3. On page 9343, column 1, amendatory instruction ''Par. 10.'' is corrected by removing items 1. and 2. and correcting ''Par. 10.'' to read as follows:

Par. 10. Paragraph (f)(2)(i) in § 1.897–1 is revised to read as follows:

Cynthia E. Grigsby,

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

[FR Doc. 96–7772 Filed 3–29–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 1 and 602

[TD 8656]

RIN 1545–AS24

Section 6662—Imposition of the Accuracy-Related Penalty; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations [TD 8656] which were published in the Federal Register for Friday, February 9, 1996 (61 FR 4876). The regulations provide guidance on the imposition of the accuracy related penalty.

EFFECTIVE DATE: February 9, 1996.

FOR FURTHER INFORMATION CONTACT: Carolyn D. Fanaroff of the Office of Associate Chief Counsel (International), (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under section 6662 of the Internal Revenue Code.

Need for Correction

As published, TD 8656 contains errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of final and temporary regulations which are the subject of FR Doc. 96–2171 is corrected as follows:

1. On page 4878, column 1, in the preamble following the paragraph heading ''*Reasonably Thorough Search for Data*'', third full paragraph, line 8, the language ''expense a search for data against (i) the'' is corrected to read ''expense of a search for data against (i) the''.

§ 1.6662–0 [Corrected]

2. On page 4879, column 2, § 1.6662–0, the entry for § 1.6662–5T (e)(4) and (e)(4)(i) are corrected to read as follows:

§ 1.6662–0 Table of contents.

* * * * *

§ 1.6662–5T Substantial and gross valuation misstatements under chapter 1 (Temporary).

* * * * *

(e)(4) Tests related to section 482.

(i) Substantial valuation misstatement.

* * * * *

§ 1.6662–5T [Corrected]

3. On page 4880, column 1, § 1.6662–5T, paragraph (e)(4)(iii), lines 5 through 9, the language ''such as land, buildings, fixtures and inventory. Intangible property includes property such as goodwill. Covenants not to compete, leaseholds, patents, contract rights, debts and choses in'' is corrected to read ''such as money, land, buildings, fixtures and inventory. Intangible property includes property such as goodwill, covenants not to compete, leaseholds, patents, contract rights, debts, choses in''.

§ 1.6662–6 [Corrected]

4. On page 4882, column 3, § 1.6662–6, paragraph (d)(2)(iii)(A), line 10, the language ''provided the most accurate measure of'' is corrected to read ''provided the most reliable measure of''.

5. On page 4883, column 1, § 1.6662–6, paragraph (d)(2)(iii)(C), line 2 from the bottom of the page, the language ''provided the most accurate measure of'' is corrected to read ''provided the most reliable measure of''.

6. On page 4884, column 2, § 1.6662–6, paragraph (e), in the *Example.*, line 7, the language ''which was carried to taxpayer's year 2 year'' is corrected to read ''which was carried to taxpayer's year 2''.

Cynthia E. Grigsby,

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

[FR Doc. 96–7771 Filed 3–29–96; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 602

[TD 8618]

RIN 1545–AM15

Definition of a Controlled Foreign Corporation, Foreign Base Company Income and Foreign Personal Holding Company Income of a Controlled Foreign Corporation; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations [TD 8618] which were published in the Federal Register for Thursday, September 7, 1995 (60 FR 46500). The final regulations govern the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation.

EFFECTIVE DATE: September 7, 1995.

FOR FURTHER INFORMATION CONTACT: Valerie Mark, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations which are the subject of this correction are under sections 954 and 957 of the Internal Revenue Code.

Need for Correction

As published, TD 8618 contains an error that is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations which are the subject of FR Doc. 95–21838 is corrected as follows:

§ 602.101 [Corrected]

On page 46530, column 3, under amendatory instruction 1. of ''Par. 11.'', § 602.101(c) is corrected in the table by removing the entry for ''§ 1.954A–2''.

Cynthia E. Grigsby,

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

[FR Doc. 96–7654 Filed 3–29–96; 8:45 am]

BILLING CODE 4830–01–U

31 CFR Part 103

RIN 1506–AA13

Requirement to Report Suspicious Transactions; Correction

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final rule requiring banks to file reports of suspicious transactions under the Bank Secrecy Act, which was published Monday, February 5, 1996 (61 FR 4326).

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Charles Klingman, Office of Financial Institutions Policy, FinCEN (703) 905–3920; or Joseph M. Myers, Attorney-Advisor, Office of Legal Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections require banks and other depository institutions to report to the Department of the Treasury under the Bank Secrecy Act any suspicious transactions relevant to possible violations of federal law or regulation. The rule is a key to the creation of a new, consolidated method for the reporting by depository institutions, on a uniform ''Suspicious Activity Report,'' of suspicious transactions; related rules have been adopted by the five federal financial supervisory agencies that examine and regulate the safety and soundness of depository institutions.

Need for Correction

As published, the final rule contains one typographical error which may prove to be misleading and is in need of clarification.

In addition, in amending the definition of ''transaction'' in 31 CFR § 103.11, the rule was written with the understanding that a prior redesignation of paragraphs in that section would be effective on April 1, 1996. *See* 60 FR 220, 228 (January 3, 1993) (redesignating various paragraphs in section 103.11, effective January 1, 1996); 60 FR 44144 (August 24, 1995) (delaying effective date until April 1, 1996). Accordingly, the amendment to the definition of ''transaction'' at section 103.11 was styled as an amendment to paragraph (ii).

However, a further delay in the effective date of the rule that contains the redesignation is published elsewhere in this issue of the Federal Register. Thus, the final rule's amendment to paragraph (ii) of § 103.11 will not make sense on April 1, because no such paragraph will exist on that date.

Correction of Publication

Accordingly, the publication on February 5, 1996 of the final regulations, which were the subject of FR Doc. 96–2272, is corrected as follows:

§ 103.11 [Corrected]

1. On page 4331, in the second column, amendatory instruction 2 is corrected to read as follows: ''2. Section 103.11 is amended by revising paragraph (r), by reserving paragraphs (v) through (pp), and by adding paragraph (qq) to read as follows:''.

2. Also on page 4331, in the second column, in § 103.11, paragraph (ii) is correctly designated as paragraph (r).

§ 103.21 [Corrected]

3. On page 4332, in the second column, in § 103.21, paragraph (e), third line from the bottom of the paragraph, the word ''disclosure'' is corrected to read ''disclose''.

Dated: March 25, 1996.

Joseph M. Myers,

Federal Register Liaison Officer, Attorney-Advisor.

[FR Doc. 96–7681 Filed 3–29–96; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11–96–004]

RIN 2115–AE46

Special Local Regulations; Opening Day Marine Parade, San Francisco Bay: San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard and the City of San Francisco coordinate an annual ''Opening Day Marine Parade, San Francisco Bay'' event. The event is usually held on the last Sunday in April. However, this year a request was approved to change the date of the event ahead one week to Sunday, May 5, 1996. This change will be for this year only. The regulated areas remain unchanged.

EFFECTIVE DATE: This rule is effective from 8 a.m. to 4 p.m. on May 5, 1996 unless cancelled earlier by the Captain of the Port San Francisco.

FOR FURTHER INFORMATION CONTACT: Lieutenant Anthony Morris, Coast Guard Marine Safety Office San Francisco Bay, CA. (510) 437–3102.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553(b), good cause exists for not publishing a notice of proposed rulemaking for this regulation. Following normal rulemaking procedures would have been impracticable. The date change was not decided upon until early March, and there was not sufficient time remaining to publish proposed rules in advance of the event.

Discussion of Regulation

This temporary rule changes the date of the marine event known as ''Opening Day Marine Parade, San Francisco Bay'' described in 33 CFR 100.1103. As stated in paragraph (a) of that section, this event is normally scheduled to occur on the last Sunday in April. This year, the event has been rescheduled from Sunday, April 28, 1996, to Sunday, May 5, 1996. No other substantive changes are being made by this rule and all participating vessels are to adhere to the regulated areas described in 33 CFR 100.1103.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. Vessel operations in this area will be controlled for only 8 hours on the day of the event. The parade will be interrupted, as necessary, to permit the passage of commercial vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this regulation to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulation

In consideration of the foregoing, the Coast Guard is amending 33 CFR Part 100 as follows:

1. The authority citation for 33 CFR Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In § 100.1103, paragraph (a) is suspended and a new paragraph (d) is added to read as follows:

§ 100.1103 Opening Day Marine Parade, San Francisco Bay.

* * * * *

(d) This section is effective from 8 a.m. until 4 p.m. PDT, May 5, 1996.

Dated: March 19, 1996.

D.D. Polk,

Captain, U.S. Coast Guard, Commander, Eleventh Coast Guard District Acting.

[FR Doc. 96–7716 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–14–M

LEGAL SERVICES CORPORATION

45 CFR Part 1633

Restriction on Representation in Certain Eviction Proceedings

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This rule is intended to proscribe the use of Legal Services Corporation (''LSC'' or ''Corporation'') funds to provide representation in eviction proceedings of persons engaged in certain illegal drug activity. Should it become a statutory requirement, the rule will be amended to also proscribe the use of non-LSC funds for this purpose.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250. (202) 336–8800.

SUPPLEMENTARY INFORMATION: On June 25, 1995, the Corporation Board of Directors (''Board'') adopted a resolution requiring Corporation staff to prepare a regulation prohibiting the use of Corporation funds to represent persons alleged to be engaging in illegal drug activity in certain eviction proceedings. On September 9, 1995, the Board's Operations and Regulations Committee (''Committee'') held public hearings on a proposed rule, to be designated 45 CFR part 1633. After adopting several changes to the staff draft of the regulation, the Committee voted to publish the proposed rule in the Federal Register for notice and comment.

The proposed rule was published in the Federal Register on September 21, 1995 (60 FR 48950). Thirteen comments were submitted during the allotted time and seven arrived after the deadline, but all twenty were fully considered. The Committee met on December 17, 1995, and February 23, 1996, to consider the written and oral comments to the proposed rule. Based on the comments, the Committee revised the proposed rule. On February 24, 1996, the Board voted to adopt the rule as recommended by the Committee as a final rule.

Corporation's Authority To Promulgate the Rule

One comment questioned LSC's authority to promulgate the rule. Under the LSC Act, the Corporation has been granted both general and specific rulemaking authority. The Corporation's rulemaking authority includes the authority to promulgate this rule in the absence of legislation intended to restrict the Corporation's discretion to regulate the matter which is the subject of the rule. See *Texas Rural Legal Aid* v. *LSC,* 940 F.2d 685, 690–91 (D.C. Cir. 1991), citing to provisions of the LSC Act, including 42 U.S.C. 2996e(a) and 2996f(a). As noted below, promulgation of this rule is consistent with provisions in H.R. 2076, the appropriations bill which included funds for LSC for Fiscal Year (''FY'') 1996. (H.R. 2076 was passed by Congress but vetoed by the President; however, the Corporation anticipates passage of legislation containing substantially similar language in the near future.)

The drug problem has had a devastating effect on the poor in our country, especially those living in public housing. This situation is of grave concern to the Board, and has been an ongoing concern of the Congress, as evidenced by H.R. 2076, section 504(18) of the House bill, section 14(a)(18) of the Senate version, and section 504(a)(17) of the House-Senate Conference version, and of the U.S. Department of Housing and Urban Development (''HUD''). Since tenants of public housing projects who engage in illegal drug activity may be viewed as a destructive force within public housing communities, acting to the detriment of low income persons, it is the Corporation's considered view that representation in eviction proceedings of those formally charged with or convicted of such activities is not consistent with the purposes of the LSC Act. This rule will implement the Corporation's goal of providing economical and effective legal assistance in a manner that improves opportunities for low income persons and will provide specific guidance to recipients for revising their priorities and procedures in the area of representation in drug-related eviction proceedings.

The remainder of this commentary provides a section-by-section analysis of the rule, discusses the major issues raised by comments, and notes the changes made in the final regulation.

Section 1633.1 Purpose

This rule is intended to preclude recipients' use of Corporation funds to defend, in certain evictions proceedings, persons who have been charged with or convicted of illegal drug activities.

Section 1633.2 Definitions

This section defines key terms used in the regulation. Several comments advocated changing the definition of ''being prosecuted'' which was included in the proposed rule. This is unnecessary, as the final rule no longer contains a definition of ''being prosecuted.'' The Corporation has revised the Prohibition section of the rule to be consistent with the apparent intent of Congress, as expressed in H.R. 2076. Section 504(a)(17) of that bill prohibited a recipient from using funds to defend a person in a proceeding to evict that person from a public housing project, if ''that person has been charged with the illegal sale or distribution of a controlled substance.'' Therefore, in the final rule, recipients are prohibited from providing representation in eviction

proceedings to persons who have been charged with or convicted of illegal drug activities. At the same time, the Corporation emphasizes that the prohibition on representation applies only when a formal charge of illegal drug activity, whether by information or indictment or their equivalent, has been made and is pending against a person, or there has been a conviction. Thus, the prohibition on representation of a person will be lifted if and when such a charge has been dismissed, that person has been acquitted of the charged illegal drug activity, or one year has elapsed since that person's conviction.

Section 1633.3 Prohibition

This section sets out the prohibition on the use of Corporation funds. It is intended to preclude a recipient from defending a person who has been charged with or, within the previous year, convicted of certain illegal drug activity in a proceeding to evict that person from a public housing project.

The prohibition set forth in the final rule, as in the proposed rule, only restricts recipients' use of Corporation funds. The Corporation notes, however, that the House-Senate Conference bill, section 504(a)(17), which was passed by Congress and vetoed by the President, would have prohibited LSC from funding any recipient that engages in representation in the eviction proceedings which are the subject of this rule, regardless of whether the recipient uses LSC or some other funds to support the representation. Thus, should it become a statutory requirement, the rule will be amended to also proscribe the use of non-LSC funds for this purpose.

Not surprisingly, most comments addressed this section of the rule. In general, the comments ranged from generally supportive to generally opposed, and from advocating expansion of the rule (for example, to cover all illegal activity) to advocating limiting the rule (for example, by permitting discretion on the part of attorneys). After considering all of the comments, the Corporation has concluded that the rule should reflect the apparent intent of Congress as declared in H.R. 2076. In response to the comments, however, some modifications have been made to clarify the intent of the rule. These changes are discussed below, as are some of the specific comments.

Recent Conviction

Several comments pointed out that the term ''recent'' as used in the proposed rule is vague and subject to inconsistent interpretation. In response, the final rule has been modified to specify a time period of one year. Thus, under the rule, a recipient may not represent, in eviction proceedings, a person who, within one year of applying for legal services, has been convicted of illegal drug activities which threatened the health or safety of tenants or employees of the public housing project.

Illegal Drug Activities

Although the Corporation does not want to encourage recipients to provide legal assistance to persons who use, manufacture, or possess illegal controlled substances, in the final rule, LSC has decided to restrict the prohibition on recipients' provision of representation to persons who have been charged with or convicted of the illegal sale or distribution of controlled substances. Such a restriction is consistent with H.R. 2076, section 504(a)(17), which, if signed into law, would have precluded the Corporation from providing funds to any person or entity that defends in eviction proceedings a person who has been charged with the illegal sale or distribution of a controlled substance. Since, in H.R. 2076, Congress did not include possession, use, or manufacture of controlled substances as proscribed drug-related activities, the Corporation has decided not to extend the prohibition on representation to such activities. However, sound judgment should be exercised by recipients on this issue.

Constitutional Objections

Two comments expressed concern that the prohibition impinges upon the due process rights of those tenants denied representation under the rule. One of these comments argues that the rule contradicts the notion of constitutional due process. The apparent concern is that the rule penalizes those merely alleged to have engaged in criminal behavior.

The Corporation is aware of the likelihood that some tenants who are eventually acquitted or against whom charges are eventually dismissed will be denied representation in their eviction proceeding. While mindful of the burden on those denied representation under the rule, the Corporation continues to be of the view that the rule should be consistent with the apparent intent of Congress, as indicated in H.R. 2076. Under the final rule, the prohibition applies when a formal charge of illegal drug activity has been made against a person, for example, by indictment or information. Statements of witnesses or even an arrest will not suffice. Finally, although the rule denies certain individuals access to a legal services attorney to represent them in eviction proceedings, it does not deny such individuals the opportunity to participate in the eviction procedures provided under HUD regulations. See, generally, 24 CFR part 966.

Health and Safety

In the comments, an issue arose concerning the prohibition's qualification that the drug activity threaten the health and safety of those residing in the public housing project or working in the public housing agency. It was suggested that, for the prohibition to apply, a threat to health or safety should not have to be alleged. While true that under the HUD regulations governing lease terminations, illegal drug activity provides grounds for such termination without reference to health or safety, the Corporation has decided to adopt the congressional view and to restrict representation when the basis for the eviction procedure is a threat to health or safety. See H.R. 2076, section 504(18) of the House bill, section 14(a)(18) of the Senate version, and section 504(a)(17) of the House-Senate Conference version.

Other Members of Household

Several comments suggested expanding the rule to prohibit representation in eviction proceedings of those being evicted because other members of the household engaged in illegal drug activity. Upon reflection, the Corporation has decided to limit the prohibition on representation to the person charged with or convicted of the illegal drug activity, which is consistent with the apparent intent of Congress. Thus, representation of household members in eviction proceedings is not prohibited under the final rule.

Section 1633.4 Recordkeeping

This section requires recipients to maintain documentation regarding representation declined under this part. Such recordkeeping will assist the Corporation in its compliance monitoring efforts and will provide empirical data for informational and policy development purposes. This section has been modified to indicate that, in addition to the Corporation and its agents and representatives, records will be available to those entitled to access by statute.

The proposed rule included language advising recipients that the records should be maintained in a manner consistent with the attorney-client privilege and all applicable rules of professional responsibility. Since all actions of recipients must be consistent

with the attorney-client privilege and rules of professional responsibility, upon consideration, the Corporation has determined that inclusion of specific language in the rule is not necessary. In implementing the requirement, recipients should remain aware of the access provision and mindful of the ethical precepts governing client confidentiality.

List of Subjects in 45 CFR 1633

Legal services, Drugs, Public housing.

For the reasons set forth in the preamble, LSC amends 45 CFR chapter XVI by adding part 1633 as follows:

PART 1633—RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS

Sec.
1633.1 Purpose.
1633.2 Definitions.
1633.3 Prohibition.
1633.4 Recordkeeping.

Authority: 42 U.S.C. §§ 2996e(a), (b)(1)(A), 2996f(a)(2)(C), 2996f(a)(3), 2996g(e).

§ 1633.1 Purpose.

This Part is designed to ensure that recipients do not use Corporation funds to provide representation in certain public housing eviction proceedings to persons charged with or convicted of illegal drug activities.

§ 1633.2 Definitions.

(a) ''Controlled substance'' has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(b) ''Public housing project'' and ''public housing agency'' have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a);

(c) A person has been ''charged with'' engaging in illegal drug activities if a criminal proceeding has been instituted against such person by a governmental entity with authority to initiate such proceeding and such proceeding is pending.

§ 1633.3 Prohibition.

Corporation funds shall not be used to defend any person in a proceeding to evict that person from a public housing project if:

(a) The person has been charged with or, within one year of the date when services are requested from a legal services provider, has been convicted of the illegal sale or distribution of a controlled substance; and

(b) The eviction proceeding is brought by a public housing agency on the basis that such illegal drug activity for which the person has been charged or for which the person has been convicted did or does now threaten the health or safety of other tenants residing in the public housing project or employees of the public housing agency.

§ 1633.4 Recordkeeping.

Recipients shall maintain a record of all instances in which representation is declined under this part. Records required by this section shall be available to the Corporation and to any other person or entity statutorily entitled to access to such records.

Dated: March 26, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–7823 Filed 3–29–96; 8:45 am]

BILLING CODE 7050–01–P

45 CFR Part 1634

Competitive Bidding for Grants and Contracts

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: Congress has adopted legislation requiring the Legal Services Corporation (''LSC'' or ''Corporation'') to utilize a system of competitive bidding for the award of grants and contracts. Pursuant to that law, this rule is intended to implement a system of competitive bidding for the award of grants and contracts for the delivery of legal services to eligible clients. The competitive bidding system has been structured so as to meet the primary purposes of the LSC Act as amended, that is, to ensure the economical and effective delivery of high quality civil legal services to eligible clients and improve opportunities for low-income persons. Competitive bidding is also intended to encourage recipients to improve their performance in delivering legal services.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250, (202) 336–8800.

SUPPLEMENTARY INFORMATION: On June 25, 1995, the Corporation's Board of Directors (''Board'') adopted a resolution requiring Corporation staff to prepare a regulation on competition in the delivery of legal services. On September 8 and 9, 1995, the Board's Operations and Regulations Committee and the Provisions for the Delivery of Legal Services Committee (''Committees'') held public hearings on a draft proposed rule, 45 CFR Part 1634. After adopting several changes to the draft proposed rule, the Committees voted to publish a proposed rule in the Federal Register for notice and comment. The proposed rule was published on September 21, 1995 (60 FR 48951), and eleven comments were received and reviewed by the Corporation. Seven comments came from LSC recipients; the rest were submitted by the State Bar of California, the Maryland Task Force on Statewide Planning for Essential Legal Services for the Indigent (''SPELSI''), the National Organization of Legal Services Workers (''NOLSW'') and the Center for Law and Social Policy (''CLASP''). On February 23, 1996, the Committees met to consider written and oral comments to the proposed rule. Based on those comments, the Committees made several revisions. On February 24, 1996, the Board voted to adopt the rule as recommended by the Committees for publication as a final rule in the Federal Register.

Generally, this rule is intended to set out the framework for a system of competitive bidding that is structured to meet the primary purposes of the LSC Act, that is, to ensure the effective and economical delivery of high quality legal services to eligible clients. Through the competitive bidding system, qualified attorneys and entities are to be provided an opportunity to compete for grants and contracts to participate in the delivery of a full range of high quality legal services in service areas determined by the Corporation. Competitive bidding is also intended to encourage recipients to improve their performance in delivering legal services.

The competitive system envisioned in this regulation is intended to encourage realistic and responsible bids aimed toward the provision of quality legal services. Proposals should favor cost-effectiveness, rather than simply cost, and favor delivery systems that provide a full range of legal assistance, rather than only some kinds of services in only some types of cases. Competitive bidding is also intended to ensure that recipients are those best able to provide high quality legal assistance to the poor.

Finally, the rule provides authority for the Corporation to modify the timetables and other provisions of the system to conform to requirements imposed by law.

A section-by-section discussion of the rule is provided below.

§ 1634.1 Purpose

This section sets out the purpose of the rule, which is to encourage the economical and effective delivery of high quality legal services to eligible clients through an integrated system of

legal services providers by providing opportunities for qualified attorneys and entities to compete for grants and contracts and by encouraging recipients to improve their performance in delivering legal assistance. The section also states that the competitive system is intended to preserve local control over resource allocation and program priorities, and minimize disruptions when there is a change in providers in the delivery of legal services to eligible clients within a service area.

Comments on this section generally disagreed on the advisability of using a competitive process in the context of a delivery system for the provision of legal assistance. Concern was expressed that a competitive process would cause instability, discourage and reduce pro bono efforts by the private bar, fragment the delivery of legal services, and undermine the goal of an economical and effective system of legal assistance to the poor. It was also pointed out that competitive bidding has not worked in criminal defense or in civil legal aid where it has been tried. The Board made no changes to the rule in response to these comments. In addition to the fact that the Corporation anticipates the passage of legislation in the near future that will require the Corporation to implement a competitive process, the Board determined that the rule sets out a process that addresses many of these concerns and yet retains flexibility for the Corporation to shape the delivery system in a way that will make it more effective and economical.

The comment from the State Bar of California agreed with the statement in paragraph (a) that a purpose of the rule is to encourage a system for the delivery of legal services that is consistent with the American Bar Association's Standards for Providers of Civil Legal Services to the Poor, but suggested that some provision should be made for any congressional directive that would be inconsistent with the Standards. The Board decided that no revision to the rule was necessary. First, the purpose section merely sets out the reason for the rule and is not an express requirement. Second, the rule's section on selection criteria requires consideration of an applicant's compliance with both the Standards and any applicable law. See § 1634.9 (c) and (e). Because the law would always take precedence over the Standards, an applicant would not be penalized for noncompliance with a Standard when such noncompliance is required by law.

The meaning of an ''integrated system of legal services providers'' was also questioned in a comment that stated that the phrase lends itself to several possible interpretations. Section 1634.1(a) of the proposed rule provided that:

> The purpose of such a competitive system is to: (a) Encourage the effective and economical delivery of high quality legal services to eligible clients that is consistent with the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor *through an integrated system of legal services providers*[.] [emphasis added].

Although the rule does not define an integrated system, the meaning of the phrase is made clear in § 1634.9(a)(6), which sets out a selection criterion that would require an applicant to demonstrate an ability to be part of an integrated system. According to this criterion, an integrated system is one where the various recipients in a State work in conjunction with the various components of the State's legal services delivery system in order to assure a full range of legal services. In addition, an integrated system facilitates the ability of recipients to develop and increase non-Corporation resources, enhances the efficient involvement of private attorneys in the delivery of legal assistance to eligible clients and improves a recipient's ability to serve their client's needs. Recipients should be better able to serve their clients if they know of and cooperate with other legal services providers, community groups and human services providers.

Section 1634.2 Definitions

This section defines key terms used in the regulation.

The definition of ''qualified applicants'' includes recipients and other entities or lawyers qualified to compete. The only comment on this definition disagreed with the inclusion of state and local governments or substate regional planning and coordination agencies due to the potential for conflicts of interest. However, these entities have been designated as qualified applicants by all versions of the competition provision included in Fiscal Year (''FY'') 1996 legislation considered by Congress. Although such legislation has not yet been enacted as law, the Corporation anticipates that such legislation will be enacted in the near future that will include this type of entity. Therefore, the Board included the provision in this final rule.

The proposed rule defined ''review panel'' as including, at a minimum, lawyers experienced in and knowledgeable about the delivery of legal assistance to low-income persons and eligible clients or representatives of low-income community groups. Comments pointed out that the provision did not go far enough because the provision's requirements would be met as long as there was one attorney knowledgeable about legal services and one eligible client or low-income representative. No requirements existed for other members of a review panel. Comments suggested that the criteria for membership on a review panel should be similar to that of a recipient's board of directors, because review panels, like governing bodies, are charged with important decision-making power in implementing the purposes of the LSC Act. Absent appropriate knowledge and qualifications, review panel members would be ill-equipped to make effective decisions regarding the use of Federal funds. Accordingly, the Board decided to amend the proposed definition to require that a majority of review panel members shall be eligible clients or representatives of low-income community groups and lawyers who are supportive of the purposes of the LSC Act and who are experienced in and knowledgeable about the delivery of legal assistance to low-income persons. In addition, the definition now requires that the remaining members of review panels be persons who are supportive of the purposes of the LSC Act and have an interest in and knowledge of the delivery of legal assistance to the poor.

The definition of a review panel also prohibits membership by any person with a financial interest or ethical conflict. Situations where there could be a conflict of interest would be where the person has been an adverse party in any case litigated by any applicant whose proposal the review panel member is to review, or has issued a complaint against any such applicant, or is disgruntled because any such applicant has denied the person's request for legal assistance. A financial conflict would arise if the person would benefit financially if an applicant is either awarded or denied a grant or contract.

The definition also excludes from membership anyone who, within the past five years, has been employed by or has been a board member of any applicant being reviewed. Comments approved of this requirement in general, but stated that it needed elaboration and clarification, either in the supplementary information or the rule itself. The Board decided to revise the rule to clarify that no person may be on a review panel for any applicant if, within the last five years, the person has been employed by any such applicant or has served on any such applicant's governing body. A person is not disqualified from serving as a review

panel member if he or she has been employed by or served on the governing body of another applicant. However, if any applicant being reviewed by the person consists of entities formed from mergers of prior recipients, and the reviewer has been associated with at least one of the former recipients, the person would be disqualified from sitting on that applicant's review panel.

Finally, it is intended that Corporation staff should not be part of review panels; however, they may facilitate the work of the panels by providing planning and administrative services.

''Service area'' is defined as an area over which there is to be competition and could include all or part of a current recipient's service area or be larger than an area served by a current recipient. The rule provides that the particular service areas for any particular competitive process are to be determined by the Corporation. Concern was expressed in comments that giving the Corporation unlimited discretion in determining service areas, in conjunction with the discretion given in § 1634.3(d) to award more than one grant or contract within a service area, could result in the funding of a multitude of small, fragmented providers. The Corporation's discretion to determine service areas is not intended to result in fragmented delivery of legal services. Rather, it is intended to allow the Corporation to respond to a reduced budget and to make grants to applicants who submit creative solutions to such fiscal realities. However, it is also intended that all decisions on competitive grants and contracts will be made with the goal of ensuring, by establishing a strong preference for, full-service providers, so that clients will have access to a full range of permissible legal services. The definition should thus be interpreted in conjunction with § 1634.3(d), which has been revised from the proposed rule to state such a preference more clearly. See discussion of § 1634.3 below.

Finally, ''subpopulation of eligible clients'' is defined as population groups, such as Native Americans and migrant farm workers, who have historically been recognized as requiring a separate system of delivery in order to be provided legal assistance effectively.

Section 1634.3 Competition for Grants and Contracts

This section sets out the framework for competition for grants and contracts awarded under section 1006(a)(1)(A) of the LSC Act and is partly based on provisions in unenacted legislation for FY 1996 (H.R. 2076) that was passed by Congress but was vetoed by the President. Provisions from H.R. 2076 have been included because the Corporation anticipates passage of legislation containing substantially similar language in the near future and H.R. 2076 is the best indication of Congressional intent regarding how the Corporation should conduct competition.

Paragraph (a) provides that, as of 30 days after the effective date of this part, all grants and contracts for the direct provision of legal assistance will be awarded by competition. Paragraph (b) provides that the Corporation will determine the service areas or the subpopulations of clients within service areas. Paragraph (c) states that the use of a competitive process for the awarding of a grant or contract for a particular service area will not constitute a termination or denial of refunding pursuant to parts 1606 and 1625 of the Corporation's regulations.

Paragraph (d) authorizes the Corporation to award more than one grant or contract for all or part of a service area. As discussed above, comments expressed concern that giving the Corporation discretion to award more than one grant or contract within a service area could result in the funding of a multitude of small, fragmented providers. That is not the intent of this provision. Rather, it is merely intended to give the Corporation the ability to deal with fiscal realities and changes that will result from a competitive process and yet still preserve an integrated full service system of legal assistance. The rule has been revised to allow the Corporation to make more than one grant or contract for a particular service area only when the Corporation determines such action is necessary to ensure that eligible clients within the service area will have access to a full range of high quality legal services.

Another comment on § 1634.3(d) stated that the words ''high quality'' should be included in paragraph (d) so that the last phrase would read: ''so as to ensure that all eligible clients within the service area will have access to a full range of high quality legal services in accordance with the LSC Act.'' The Board agreed and the words ''high quality'' are included in this final rule.

Paragraph (e) states that no grant or contract may be awarded for a term of more than five years. It also clarifies that, if the amount of funding during the period of the grant or contract is reduced as a result of changes in congressional appropriations, as opposed to a reduction of funding for a particular recipient for cause, such a reduction will not be considered to be a termination or denial of refunding under Corporation regulations.

Section 1634.4 Announcement of Competition

Paragraph (a) of this section requires the Corporation to give public notice of a competition within a particular service area to current recipients, appropriate bar associations and other interested groups. The Corporation is also required to publish an announcement in periodicals of State and local bar associations and at least one daily newspaper of general circulation in the area to be served. The rule recognizes that LSC has no control over the scheduling and policies of bar journals, so the rule requires that LSC ''take appropriate steps to announce'' the competition in bar journals. The timing of the announcements may be affected by Congressional directions. Paragraph (b) sets out the minimal contents for the request for proposals (''RFP''), but leaves to the Corporation discretion to include the details of what the RFP will include. The Corporation is required by paragraph (c) to make a copy of the RFP available to any person or entity requesting one.

Section 1634.5 Identification of Qualified Applicants for Grants and Contracts

This section lists types of applicants that would qualify to compete for a grant or contract under this part. These include current recipients, other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, private attorneys, groups of private attorneys or law firms, State or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The rule proposes that in order to receive an award of a grant or contract, all of the above entities would be required to have, depending on the type of applicant, a governing or policy body that is consistent with the provisions of 45 CFR part 1607, the Corporation's regulations on governing bodies. Part 1607 requires all current LSC recipients to have governing bodies, unless a recipient is granted a waiver pursuant to § 1607.6. Recipients granted a waiver, however, are still required to have a policy body. Under part 1607, a governing body is defined as a recipient's governing board or body that has authority to govern the activities of the LSC recipient. A policy body, on the other hand, is a body formed pursuant

to the waiver provision of part 1607 that would formulate and enforce policy with respect to the services provided under a grant or contract made under the LSC Act. Policy bodies would be allowed only under unusual situations, such as when the recipient is not principally a legal assistance organization but gets an LSC grant for legal assistance activities. Because a governing board or policy body is not necessarily mandated under the LSC Act or the Corporation's appropriations act for entities or individuals listed in § 1634.5(a) (3), (4) and (5), the Corporation requested comments in the proposed rule on whether, as a matter of policy, some governing or policy body should be required for all types of grantees so that all grantees are accountable to and guided by the policy decisions of such bodies. All comments on this provision agreed on the advisability of having governing boards or bodies for all types of recipients. One current LSC recipient stated that its ability to enjoy significant community support and to receive State and local funding was largely due to the ties that the program's boards of directors have had with the community. Another stated that having some type of governing body helps ensure adequate input from the client community. Finally, one comment suggested that governing or policy bodies should be independent of any State or local government influence.

The Board agreed that it is advisable for every recipient to be accountable to a governing board or policy body for its activities under the LSC grant as long as the requirement is not inconsistent with other applicable law. When the Corporation was first created in 1974, Congress included a governing body requirement in the LSC Act and, starting in the early 1980's, has included additional requirements in the Corporation's annual appropriations acts in a proviso commonly called the McCollum Amendment. The McCollum Amendment mandates that attorney governing body members be appointed by appropriate local bar associations. The intent of this provision is to ''increase local accountability of programs and to improve enforcement of the act and regulations.'' 127 Cong. Rec. 12550 (June 16, 1981). In accord with the consistent congressional view favoring governing bodies for LSC recipients, the Corporation believes that some sort of oversight body for each recipient is critical to the preservation of an accountable and high quality legal services system. In addition, the Corporation's experience with governing bodies has been that they provide critical community connections and policy and oversight functions necessary for a recipient to operate a successful legal services program. Furthermore, to require such accountability by some recipients and not others would create an unlevel playing field in the competitive process and would risk the misuse of LSC funds by those recipients without local oversight bodies.

Section 1634.5(a)(3) identifies law firms as qualified applicants but parenthetically excludes from eligibility any ''private law firm that expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public.'' The parenthetical language, which is found in Section 1007(b)(5) of the LSC Act, prohibits the Corporation from making grants or contracts with law firms that expend more than 50 percent or more of their resources and time litigating issues in the broad interests of a majority of the public, rather than the poor as a class of beneficiaries. Congress has chosen not to permit LSC to fund the activities of such law firms. Rather, under the LSC Act, Congress has indicated that LSC should fund programs focused primarily on the provision of legal assistance to the poor.

The proposed paragraph (c) authorized applicants to submit joint applications. The Board revised this section from the proposed rule to allow a joint application only when the application delineates the respective roles and responsibilities of each qualified applicant.

Section 1634.6 Notice of Intent to Compete

This section contemplates that all applicants, including current recipients, who intend to compete for a grant or contract for a particular service area will file a notice of intent to compete which shall include the information delineated in paragraph (b). Filing deadlines for the notices shall be specified in the RFP. The information requested will give the Corporation notice of the level of competition and some indication as to whether applicants may need assistance in order to complete a full application.

One comment suggested that the Corporation should not require current recipients to provide all the information listed in paragraph (b) unless there has been a change because it is not cost efficient for the Corporation to request information it already has. The Board noted that the proposed rule already stated that applicants who had provided the required information prior to filing a notice of intent to compete would not need to resubmit such information. However, the Board revised the rule to require all applicants to submit the required information at the time of filing an intent to compete. The Board adopted the revision because all applicants should be treated equally and because it is administratively more efficient for the Corporation to receive all information relevant to the competitive grant process in the notice of intent to compete.

Another comment advised including a requirement that the Corporation inform all applicants of all notices of intent to compete that had been filed, so that applicants would be informed of the extent of competition for any particular service area. Another stated that applicants should be given the names, addresses and telephone numbers of potential competitors who had filed notices to compete and the state bar numbers of the potential applicant's executive, managing or senior attorneys. Finally, one comment suggested that a new provision be added to § 1634.7 to address the issue of whether applications are subject to disclosure under the Freedom of Information Act (''FOIA''). The Board did not revise the rule in response to these comments because any applicants interested in competition information may submit requests for such information pursuant to the Corporation's FOIA rule, 45 CFR part 1602, and the Board decided that it is better to deal with the release of competition information pursuant to the policies and safeguards in the FOIA rule.

Under FOIA, ''agency records'' must be released upon request unless the information is protected by one or more of nine FOIA exemptions. Within the context of federal grants, Exemptions 4 and 5 provide protection for certain grant or grant making documents. 5 U.S.C. §§ 552(b)(4) and 552(b)(5).

Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential. Information that a person is required to provide in order to compete for a federal grant is considered to be confidential if disclosure would either impair the agency's ability to obtain necessary information in the future or cause substantial harm to the competitive position of the provider of the information. See *Critical Mass Energy Project* v. *Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992)(en banc); *National Parks and Conservation Association* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Exemption 5 protects ''inter-agency or intra-agency memoranda or letters which would not be available by law to

a party * * * in litigation with the agency.'' This exemption protects materials reflecting an agency's predecisional deliberative or policy-making processes but does not protect purely factual information, *NLRB* v. *Sears, Roebuck & Company*, 421 U.S. 132, 151 (1975); *Russell* v. *Department of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982), unless it is so intertwined with protected information that its release would reveal the agency's deliberative process. *Wolfe* v. *HHS*, 839 F.2d 768, 774 (D.C. Cir. 1988)(en banc).

Pursuant to these exemptions, the Corporation intends to treat competition records in the following manner. Prior to making awards, the Corporation will not release any competitive grant applications and any other related documents that would cause competitive harm to applicants. Once grants are awarded, however, the Corporation intends to release any successful applications requested under FOIA except for any proprietary information contained therein. Proprietary information generally means information that is the product of a proprietor, to which the proprietor has an exclusive right in the competitive market, and the release of which would harm the competitive advantage of the proprietor. Prior to releasing successful applications, the Corporation will inform applicants of any FOIA requests for their applications. Applicants may then submit requests to the Corporation that their applications or other relevant documents not be disclosed. Such requests shall state all grounds upon which the disclosure is opposed. However, the Corporation will make the final decision as to whether information is protected from disclosure under FOIA and will inform the applicant if the material is to be released. The applicant will be given the opportunity to appeal that decision to the Corporation's President.

The Corporation will also protect from disclosure any competitive grant documents that are determined to be predecisional and deliberative, the release of which would reveal the Corporation's deliberative or policy-making processes. Finally, the Corporation will protect any other information protected under FOIA.

Section 1634.7 Application Process

This section sets out the application process and the basic requirements that applicants will have to meet in order to be entitled to compete for a grant or contract to deliver services in a particular service area. The Corporation is given broad discretion to determine what information is needed to complete a particular application.

Paragraph (e) of the proposed rule provided that the Corporation may require each applicant to agree in writing that, if the applicant is not selected for the award of a grant or contract, the applicant would not institute a court action regarding the denial of an award until the applicant has participated in a mediation with the Corporation on the matter. The proposed rule also provided that mediation procedures would be designed by the Corporation and would provide for the convenience of the parties and encourage an expeditious resolution of issues. The provision was intended to avoid costly litigation by providing a relatively friendly forum for the parties to meet and resolve issues. The California State Bar expressed support for the provision with no explanation, but the CLASP disagreed and urged deletion of the provision. According to CLASP, regardless of the fact that the proposed rule stated that the provision was not intended to suggest that applicants have any property or hearing rights,[1] the very fact that the provision is in the rule is an invitation for applicants to use mediation as a forum to raise issues over the results of the competition process that otherwise would not have been raised. CLASP believes that this provision could embroil the Corporation in expensive, drawn-out mediation procedures and will actually precipitate litigation rather than head it off.

In determining whether to retain the proposed mediation provision, the Board considered comments made during its public hearings on the rule as well as the written public comments. One concern raised at the public hearings was whether the mediation provision is intended to delay making a grant to a successful applicant until the complaining applicant's issues are decided through mediation. It was pointed out that, if the grant award is not delayed, there would be no remedy for the complaining applicant and thus nothing of substance to mediate. Another issue raised was whether a standard should be established to determine whether a complaint had sufficient merit to warrant a mediation procedure and who would decide whether the standard is met. One comment suggested that a way to avoid frivolous complaints would be to require that the applicant agree to pay half of the cost of mediation in order to discourage frivolous complaints.

The Board agreed to delete the mediation provision from the rule. In addition to the concerns raised in comments, the Board also noted that the provision is unnecessary. The Corporation already has authority to respond to complaints about its activities and to decide the appropriate type of forum to address and resolve such complaints.

Section 1634.8 Selection Process

This section sets out the selection process to be used by the Corporation when deciding what grants or contracts are to be made to service areas. The proposed rule required the Corporation to review all relevant information about each applicant that is no more than five years old, request any necessary additional information, conduct on-site visits if appropriate to fully evaluate an application, and summarize in writing any information not contained in an applicant's application. One comment suggested that there may be some instances where information about an applicant that is older than five years may have relevance to the competitive process and that the Corporation should not make a hard and fast rule against reviewing older documents.

The Board agreed that the cutoff time should be changed to six years. Because competitive grants may not be made for longer than a 5-year term, the extra year would allow the Corporation, for example, to review information about applicants during the last year of a prior 5-year competitive grant term. Information from a prior grant term would inform the Corporation of the status of grantees prior to a new competitive process and could, for example, provide information on any unresolved problems that arose during the immediately proceeding grant period.

The proposed rule required the Corporation to convene a review panel if there is more than one applicant for a particular service area, although it could choose to convene a panel when there is only one applicant. Comments disagreed with the provision that would allow the Corporation to forego a review panel if there is only one applicant for a service area. They argued that an independent review panel is necessary for all applicants to ensure a fair and impartial process free of the vagaries of politics. Not having a review panel for

[1] It is well established that, absent express statutory language to the contrary or a showing that the applicant's statutory or constitutional rights have been violated, pre-award applicants for discretionary grants have no protected property interests in receiving a grant and thus have no standing to appeal the funding decision by the grantor. See Cappalli, Federal Grants and Cooperative Agreements, § 3.28 and *Legal Services Corporation* v. *Ehrlich*, 457 F. Supp. 1058, 1062–64 (D. Md. 1978).

a single applicant, according to the comments, risks a situation where a single applicant is given less scrutiny or is selected for a grant award simply because there are no competing applications. Although recognizing that the comments have merit, the Board decided to retain the Corporation's discretion to forego a review panel for single applicants. The Board is concerned that reductions in the Corporation's appropriations could make it difficult, if not impossible in any particular grant year, to fund review panels for single applicants.

The rule provides that the Corporation staff shall conduct one or more on-site visits to an applicant if necessary and appropriate to evaluate the application fully. One comment stated that review panels should also have the option for a site visit. The Board opted against this proposal, both because of the financial and administrative burden and because site visits are intended to allow Corporation staff to compile all pertinent information regarding a particular grantee for the use of the review panels.

The process set out in this section provides that review panels would review the applications and any summaries prepared by the Corporation and would make recommendations to the Corporation regarding awards for particular service areas. The Corporation staff would then consider the review panel's recommendation and forward a staff recommendation to the Corporation President for a final decision. The staff's written recommendation must include the recommendations of the review panel and, if the staff recommendation differs from that of the review panel, the staff recommendation shall include an explanation of why the recommendations differ. The requirement that the review panel's recommendation be included in all staff recommendations to the President was made in response to comments suggesting such a requirement. The Board decided that the President would be better able to make grant decisions if provided with review panel recommendations.

One comment suggested that the rule specify a time frame for review panels to either meet or render recommendations. The Board determined that establishing a time frame should be an internal administrative decision based on the Corporation's needs in any given year and that no time frame should be included in the rule.

Under the proposed rule, the Corporation staff could recommend that the President make an award up to five years or, if there is no applicant for a service area or no applicant meets the criteria to receive a grant, paragraph (c) made it clear that the Corporation had discretion to determine how to provide for legal assistance in the service area. Among other choices, the Corporation could put a current grantee on month-to-month funding in order to conduct a new competition or enlarge the service area of a neighboring grantee.

One comment suggested that paragraph (c) should state more affirmatively that LSC must make some provision to ensure that service is continued in an area where there were no acceptable applicants. The Board revised the rule to require the Corporation to take all practical steps to ensure the continued provision of legal assistance in a particular service area.

Finally, paragraph (b) provides that the President is to make final decisions regarding the awarding of grants and contracts. It also requires the Corporation to notify all applicants in writing of the President's decisions.

Section 1634.9 Selection Criteria

This section sets out the selection criteria that the Corporation will use in selecting recipients for the service areas subject to competition. The criteria include those specified in unenacted FY 1996 legislation (H.R. 2076) that was passed by Congress but vetoed by the President, as well as additional criteria taken from the provisions of the LSC Act and regulations and from the Performance Measures which the Corporation has developed to measure the performance of recipients. Criteria from H.R. 2076 have been included because it is the best indication of congressional intent on the Corporation's competitive process and the Corporation anticipates that legislation that is substantially similar to H.R. 2076 will be enacted in the near future.

This section received the most comments. Paragraph (a)(1) requires each applicant to demonstrate an understanding of the basic legal needs of the eligible clients in the area served. There were no comments and no changes made to this subsection.

Two comments on paragraph (a)(2) stated that the focus should be on the quality of an applicant's actual services as well as on the quality of the applicant's approach to the provision of legal services as provided in the proposed subsection (b). The Board agreed and revised paragraph (a)(2) to require applicants to demonstrate the quality of their legal services as well as their delivery approach.

Paragraph (a)(2) also requires each applicant to demonstrate the quality, feasibility and cost-effectiveness of its delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor. Among other things, an applicant's ability to meet this criterion could be demonstrated by information regarding the applicant's experience with the delivery of the type of legal assistance contemplated under the grants or contracts. For applicants who are not current recipients, such experience could include, for example, experience in a legal clinic for the poor, the provision of legal assistance on a pre-paid basis to low-income clients, experience on a pro bono or judicare panel, the provision of legal assistance as a private attorney in a low-income neighborhood, experience as a public defender, or other experience in the public sector.

Paragraph (a)(3) requires that the applicant's governing board or policy body meets or will meet all applicable statutory, regulatory or other legal requirements in accordance with the time schedules set out by the Corporation. This requirement would not apply to an entity if it is inconsistent with applicable law.

Paragraph (a)(4) requires that the applicant demonstrate how it will comply with applicable provisions of the law and LSC regulations. Among other things, the applicant's past experience of compliance with the Corporation or other funding sources or regulatory agencies would be evidence of the applicant's ability to comply with this criterion.

Paragraph (a)(5), which reflects congressional desire expressed in unenacted FY 1996 legislation that was passed by Congress but vetoed by the President, requires the Corporation to consider the reputations of the applicant's principals and key staff.

Paragraph (a)(6) requires applicants to demonstrate their capacity to provide high quality, economical and efficient legal services through an integrated delivery system, such as a capacity of the applicant to engage in collaborative efforts with other organizations involved in serving or assisting eligible clients. One comment stated that it is not clear in this provision whether an applicant should coordinate with State and local legal services programs in order to ensure a full range of legal assistance within the applicant's service area or in other service areas of the state. The intent of this provision is that the applicant seek to develop a legal assistance delivery approach that will

help ensure that a full range of legal assistance will be provided within the applicant's service area, even if the applicant does not itself provide a full range of legal assistance. It is expected that coordination with other legal services systems throughout the State will enable the recipient to provide a higher quality of legal assistance in the applicant's area.

Paragraph (a)(7) requires applicants to demonstrate a capacity to develop and increase non-Corporation resources. This requirement was part of paragraph (f) in the proposed rule, but the Board decided that it should be stated in a separate provision.

Paragraph (a)(8) requires that applicants who are not current recipients demonstrate a capacity to take over pending cases from current recipients and to provide for service to such clients.

Paragraph (a)(9) focuses on institutional conflicts of interest of the applicant with the client community. Institutional conflicts could prevent applicants from being able to deliver the full range of legal services necessary to address the basic legal needs of clients. Applicants must show that they do not have any conflicts that would require them to refuse to provide representation on particular cases that are of high priority to the client community because the applicant is not permitted by a funding source independent of LSC to provide such assistance.

Paragraph (b) provides that the Corporation shall not give any preference to current or previous recipients of funds when awarding grants and contracts under the competitive bidding system. One comment stated that, absent legislation to the contrary, ''no rational basis exists not to grant a preference to current or previous grantees,'' and any such preference would be overcome by less than favorable monitoring and compliance reports. The Board did not agree. Rather, the Board believes that grant decisions pursuant to a fair competitive process should be determined on the selection criteria and not on a prior status of an applicant as an LSC recipient. The Board also noted that all versions of unenacted FY 1996 legislation dealing with competition expressly provided that no preference be given to current or previous recipients.

Section 1634.10 Transition Provisions

This section provides for transition steps that the Corporation may take when a current recipient is replaced by another applicant. Under paragraph (a)(1), funding can be provided to enable a current recipient to complete cases, or withdraw or transfer such cases to the new recipient or other appropriate legal services provider. Paragraph (a)(2) requires the Corporation to ensure the appropriate disposition of real and personal property of the current recipient which was purchased in whole or in part with Corporation funds in accordance with Corporation policies. The proposed rule did not require the Corporation to ensure the appropriate disposition of property but merely authorized the Corporation to do so. One comment suggested that this activity should be mandatory and the Board agreed.

Another comment suggested that the rule should state that continued funding for a recipient should be for ''a reasonable period of time'' and at a ''reasonable'' level to be determined by the Corporation. The Board decided against adding the ''reasonable'' language. It is already implicit in the rule because the Corporation should always act in a reasonable manner, as opposed to an arbitrary or capricious manner. In addition, the term ''reasonable,'' standing alone, is too vague to be helpful.

Paragraph (b) provides that the Corporation can fund new recipients at less than their full grant initially with incremental increases to the full amount of their grant award, if necessary, to ensure effective and economical use of Corporation funds during the early months of a grant to a new recipient. Such funding was used effectively in past years when new grantees were funded and helped prevent the accumulation of excessive fund balances. Other transition issues may arise that are not expressly addressed in this rule. The Corporation intends to address such issues as they arise in a consistent and fair manner and will clearly communicate any transition policies or procedures to affected recipients in a timely manner.

Section 1634.11 Replacement of Recipient That Does Not Complete Grant Term

This section was not in the proposed rule but was addressed by the Board in its consideration of § 1634.8(c), which deals with the Corporation's discretion to deal with a situation where, pursuant to a competition, there are no applicants for a service area or no applicant meets the grant criteria. This section addresses a different situation where a recipient, during the term of a grant, is unable or unwilling to continue to perform the duties required under the terms of its grant. According to this section, under such circumstances, the Corporation shall take all practical steps to ensure continued legal assistance in the service area and shall have discretion to determine the appropriate means to do so. Alternatives would include enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term grant with another qualified provider until the Corporation is able to complete another competition.

Section 1634.12 Emergency Procedures and Waivers

This section, which was designated as § 1634.11 in the proposed rule, provides that the President may waive or amend certain parts of the regulations, including the timetables established thereunder when necessary to comply with requirements imposed by law. This is necessary, for example, because Congress has not yet enacted legislation providing the Corporation with specific timetables or full fiscal year funding. Because of the uncertainty of when such legislation will be enacted or what the exact terms of such legislation will be, the Corporation may need flexibility in order to issue its competitive grants in a manner consistent with such law when finally enacted. Only one comment was received on this section and it stated that no other provisions of this rule should be waiveable except for those cited in the section and that the rule should expressly say so. The Board determined that the waiver provision already applies only to those provisions cited and that no clarification was necessary.

List of Subjects in 45 CFR Part 1634

Contracts, grants, legal services.

For the reasons set out in the preamble, LSC proposes to amend 45 CFR chapter XVI by adding part 1634.

PART 1634—COMPETITIVE BIDDING FOR GRANTS AND CONTRACTS

Sec.

1634.1 Purpose.
1634.2 Definitions.
1634.3 Competition for grants and contracts.
1634.4 Announcement of competition.
1634.5 Identification of qualified applicants for grants and contracts.
1634.6 Notice of intent to compete.
1634.7 Application process.
1634.8 Selection process.
1634.9 Selection criteria.
1634.10 Transition provisions.
1634.11 Replacement of recipient that does not complete grant term.
1634.12 Emergency procedures and waivers.

Authority: 42 U.S.C. 2996e(a)(1)(A); 2996f(a)(3).

§ 1634.1 Purpose.

This part is designed to improve the delivery of legal assistance to eligible clients through the use of a competitive system to award grants and contracts for the delivery of legal services. The purposes of such a competitive system are to:

(a) Encourage the effective and economical delivery of high quality legal services to eligible clients that is consistent with the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor through an integrated system of legal services providers;

(b) Provide opportunities for qualified attorneys and entities to compete for grants and contracts to deliver high quality legal services to eligible clients;

(c) Encourage ongoing improvement of performance by recipients in providing high quality legal services to eligible clients;

(d) Preserve local control over resource allocation and program priorities; and

(e) Minimize disruptions in the delivery of legal services to eligible clients within a service area during a transition to a new provider.

§ 1634.2 Definitions.

(a) *Qualified applicants* are those persons, groups or entities described in section 1634.5(a) of this part who are eligible to submit notices of intent to compete and applications to participate in a competitive bidding process as described in this part.

(b) *Review panel* means a group of individuals who are not Corporation staff but who are engaged by the Corporation to review applications and make recommendations regarding awards of grants or contracts for the delivery of legal assistance to eligible clients. A majority of review panel members shall be lawyers who are supportive of the purposes of the LSC Act and experienced in and knowledgeable about the delivery of legal assistance to low-income persons, and eligible clients or representatives of low-income community groups. The remaining members of the review panel shall be persons who are supportive of the purposes of the LSC Act and have an interest in and knowledge of the delivery of quality legal services to the poor. No person may serve on a review panel for an applicant with whom the person has a financial interest or ethical conflict; nor may the person have been a board member of or employed by that applicant in the past five years.

(c) *Service area* is the area defined by the Corporation to be served by grants or contracts to be awarded on the basis of a competitive bidding process. A service area is defined geographically and may consist of all or part of the area served by a current recipient, or it may include an area larger than the area served by a current recipient.

(d) *Subpopulation of eligible clients* includes Native Americans and migrant farm workers and may include other groups of eligible clients that, because they have special legal problems or face special difficulties of access to legal services, might better be addressed by a separate delivery system to serve that client group effectively.

§ 1634.3 Competition for grants and contracts.

(a) After the effective date of this part, all grants and contracts for legal assistance awarded by the Corporation under Section 1006(a)(1)(A) of the LSC Act shall be subject to the competitive bidding process described in this part. No grant or contract for the delivery of legal assistance shall be awarded by the Corporation for any period after the effective date of this part, unless the recipient of that grant has been selected on the basis of the competitive bidding process described in this part.

(b) The Corporation shall determine the service areas to be covered by grants or contracts and shall determine whether the population to be served will consist of all eligible clients within the service area or a specific subpopulation of eligible clients within one or more service areas.

(c) The use of the competitive bidding process to award grant(s) or contract(s) shall not constitute a termination or denial of refunding of financial assistance to a current recipient pursuant to parts 1606 and 1625 of this chapter.

(d) Wherever possible, the Corporation shall award no more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area. The Corporation may award more than one grant or contract to provide legal assistance to eligible clients or a subpopulation of eligible clients within a service area only when the Corporation determines that it is necessary to award more than one such grant or contract in order to ensure that all eligible clients within the service area will have access to a full range of high quality legal services in accordance with the LSC Act or other applicable law.

(e) In no event may the Corporation award a grant or contract for a term longer than five years. The amount of funding provided annually under each such grant or contract is subject to changes in congressional appropriations or restrictions on the use of those funds by the Corporation. A reduction in a recipient's annual funding required as a result of a change in the law or a reduction in funding appropriated to the Corporation shall not be considered a termination or denial of refunding under parts 1606 or 1625 of this chapter.

§ 1634.4 Announcement of competition.

(a) The Corporation shall give public notice that it intends to award a grant or contract for a service area on the basis of a competitive bidding process, shall take appropriate steps to announce the availability of such a grant or contract in the periodicals of State and local bar associations, and shall publish a notice of the Request For Proposals (RFP) in at least one daily newspaper of general circulation in the area to be served under the grant or contract. In addition, the Corporation shall notify current recipients, other bar associations, and other interested groups within the service area of the availability of the grant or contract and shall conduct such other outreach as the Corporation determines to be appropriate to ensure that interested parties are given an opportunity to participate in the competitive bidding process.

(b) The Corporation shall issue an RFP which shall include information regarding: who may apply, application procedures, the selection process, selection criteria, the service areas that will be the subject of the competitive bidding process, the amount of funding available for the service area, if known, applicable timetables and deadlines, and the LSC Act, regulations, guidelines and instructions and any other applicable federal law. The RFP may also include any other information that the Corporation determines to be appropriate.

(c) The Corporation shall make a copy of the RFP available to any person, group or entity that requests a copy in accordance with procedures established by the Corporation.

§ 1634.5 Identification of qualified applicants for grants and contracts.

(a) The following persons, groups and entities are qualified applicants who may submit a notice of intent to compete and an application to participate in the competitive bidding process:

(1) Current recipients;

(2) Other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients;

(3) Private attorneys, groups of attorneys or law firms (except that no

private law firm that expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public may be awarded a grant or contract under the LSC Act);

(4) State or local governments;

(5) Substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

(b) All persons, groups and entities listed in paragraph (a) of this section must have a governing or policy body consistent with the requirements of part 1607 of this chapter or other law that sets out requirements for recipients' governing bodies, unless such governing body requirements are inconsistent with applicable law.

(c) Applications may be submitted jointly by more than one qualified applicant so long as the application delineates the respective roles and responsibilities of each qualified applicant.

§ 1634.6 Notice of intent to compete.

(a) In order to participate in the competitive bidding process, an applicant must submit a notice of intent to compete on or before the date designated by the Corporation in the RFP. The Corporation may extend the date if necessary to take account of special circumstances or to permit the Corporation to solicit additional notices of intent to compete.

(b) At the time of the filing of the notice of intent to compete, each applicant must provide the Corporation with the following information as well as any additional information that the Corporation determines is appropriate:

(1) Names and resumes of principals and key staff;

(2) Names and resumes of current and proposed governing board or policy body members and their appointing organizations;

(3) Initial description of area proposed to be served by the applicant and the services to be provided.

§ 1634.7 Application process.

(a) The Corporation shall set a date for receipt of applications and shall announce the date in the RFP. The date shall afford applicants adequate opportunity, after filing the notice of intent to compete, to complete the application process. The Corporation may extend the application date if necessary to take account of special circumstances.

(b) The application shall be submitted in a form to be determined by the Corporation.

(c) A completed application shall include all of the information requested by the RFP. It may also include any additional information needed to fully address the selection criteria, and any other information requested by the Corporation. Incomplete applications will not be considered for awards by the Corporation.

(d) The Corporation shall establish a procedure to provide notification to applicants of receipt of the application.

§ 1634.8 Selection process.

(a) After receipt of all applications for a particular service area, Corporation staff shall:

(1) Review each application and any additional information that the Corporation has regarding each applicant, including for any applicant that is or includes a current or former recipient, past monitoring and compliance reports, performance evaluations and other pertinent records for the past six years;

(2) Request from an applicant and review any additional information that the Corporation determines is appropriate to evaluate the application fully;

(3) Conduct one or more on-site visits to an applicant if the Corporation determines that such visits are appropriate to evaluate the application fully;

(4) Summarize in writing information regarding the applicant that is not contained in the application if appropriate for the review process; and

(5) Convene a review panel unless there is only one applicant for a particular service area and the Corporation determines that use of a review panel is not appropriate. The review panel shall:

(i) Review the applications and the summaries prepared by the Corporation staff. The review panel may request other information identified by the Corporation as necessary to evaluate the applications fully; and

(ii) Make a written recommendation to the Corporation regarding the award of grants or contracts from the Corporation for a particular service area.

(6) After considering the recommendation made by the review panel, if a review panel was convened, make a staff recommendation to the President. The staff recommendation shall include the recommendation of the review panel and, if the staff recommendation differs from that of the review panel, an explanation of the basis for the difference in the recommendations.

(b) After reviewing the written recommendations, the President shall select the applicants to be awarded grants or contracts from the Corporation and the Corporation shall notify each applicant in writing of the President's decision regarding each applicant's application.

(c) In the event that there are no applicants for a service area or that the Corporation determines that no applicant meets the criteria and therefore determines not to award a grant or contract for a particular service area, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in that service area. The Corporation shall have discretion to determine how legal assistance is to be provided to the service area, including, but not limited to, enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term, interim grant or contract with another qualified provider for the provision of legal assistance in the service area until the completion of a competitive bidding process within a reasonable period of time.

§ 1634.9 Selection criteria.

(a) The criteria to be used to select among qualified applicants shall include the following:

(1) Whether the applicant has a full understanding of the basic legal needs of the eligible clients in the area to be served;

(2) The quality, feasibility and cost-effectiveness of the applicant's legal services delivery and delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor, as evidenced by, among other things, the applicant's experience with the delivery of the type of legal assistance contemplated under the proposal;

(3) Whether the applicant's governing or policy body meets or will meet all applicable requirements of the LSC Act, regulations, guidelines, instructions and any other requirements of law in accordance with a time schedule set out by the Corporation;

(4) The applicant's capacity to comply with all other applicable provisions of the LSC Act, rules, regulations, guidelines and instructions, as well as with ethical requirements and any other requirements imposed by law. Evidence of the applicant's capacity to comply with this criterion may include, among other things, the applicant's compliance experience with the Corporation or other funding sources or regulatory agencies, including but not limited to Federal or State agencies, bar associations or foundations, courts,

IOLTA programs, and private foundations;

(5) The reputations of the applicant's principals and key staff;

(6) The applicant's knowledge of the various components of the legal services delivery system in the State and its willingness to coordinate with the various components as appropriate to assure the availability of a full range of legal assistance, including:

(i) its capacity to cooperate with State and local bar associations, private attorneys and pro bono programs to increase the involvement of private attorneys in the delivery of legal assistance and the availability of pro bono legal services to eligible clients; and

(ii) its knowledge of and willingness to cooperate with other legal services providers, community groups, public interest organizations and human services providers in the service area;

(7) The applicant's capacity to develop and increase non-Corporation resources;

(8) The applicant's capacity to ensure continuity in client services and representation of eligible clients with pending matters; and

(9) The applicant does not have known or potential conflicts of interest, institutional or otherwise, with the client community and demonstrates a capacity to protect against such conflicts.

(b) In selecting recipients of awards for grants or contracts under this part, the Corporation shall not grant any preference to current or previous recipients of funds from the Corporation.

§ 1634.10 Transition provisions.

(a) When the competitive bidding process results in the award of a grant or contract to an applicant, other than the current recipient, to serve the area currently served by that recipient, the Corporation—

(1) may provide, if the law permits, continued funding to the current recipient, for a period of time and at a level to be determined by the Corporation after consultation with the recipient, to ensure the prompt and orderly completion of or withdrawal from pending cases or matters or the transfer of such cases or matters to the new recipient or to other appropriate legal service providers in a manner consistent with the rules of ethics or professional responsibility for the jurisdiction in which those services are being provided; and

(2) shall ensure, after consultation with the recipient, the appropriate disposition of real and personal property purchased by the current recipient in whole or in part with Corporation funds consistent with the Corporation's policies.

(b) Awards of grants or contracts for legal assistance to any applicant that is not a current recipient may, in the Corporation's discretion, provide for incremental increases in funding up to the annualized level of the grant or contract award in order to ensure that the applicant has the capacity to utilize Corporation funds in an effective and economical manner.

§ 1634.11 Replacement of recipient that does not complete grant term.

In the event that a recipient is unable or unwilling to continue to perform the duties required under the terms of its grant or contract, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in that service area. The Corporation shall have discretion to determine how legal assistance is to be provided to the service area, including, but not limited to, enlarging the service area of a neighboring recipient, putting a current recipient on month-to-month funding or entering into a short term, interim grant or contract with another qualified provider for the provision of legal assistance in the service area until the completion of a competitive bidding process within a reasonable period of time.

§ 1634.12 Emergency procedures and waivers.

The President of the Corporation may waive the requirements of §§ 1634.6 and 1634.8(a) (3) and (5) when necessary to comply with requirements imposed by law on the awards of grants and contracts for a particular fiscal year.

Dated: March 26, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–7824 Filed 3–29–96; 8:45 am]

BILLING CODE 7050–01–P

45 CFR Part 1635

Timekeeping Requirement

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This rule requires all recipients of Legal Services Corporation (''LSC'' or ''Corporation'') funds to account for the time spent on all cases, matters, and supporting activities by their attorneys and paralegals, whether funded by the Corporation or by other sources.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, D.C. 20002–4250. (202) 336–8800.

SUPPLEMENTARY INFORMATION: On June 25, 1995, in order to improve the accountability of recipients for their funds (both Corporation and all other funds), and in response to concerns expressed by members of Congress in proposed reauthorization legislation, proposed appropriations legislation, and in congressional hearings, the LSC Board of Directors (''Board'') adopted a resolution requiring Corporation staff to prepare a regulation specifying a time and recordkeeping system for implementation by LSC recipients. On September 8, 1995, the Board's Operations and Regulations Committee (''Committee'') held public hearings on proposed 45 CFR part 1635. After adopting several changes to the proposed rule, the Committee voted to publish the proposed rule in the Federal Register for notice and comment.

The proposed rule was published in the Federal Register on September 21, 1995 (60 FR 48956). Six comments were submitted during the allotted time and three arrived after the deadline, but all nine were fully considered. The Committee met on December 17, 1995, to consider the written and oral comments to the proposed rule. Based on the comments, the Committee revised the proposed rule. On December 18, 1995, the Board voted to adopt the rule as recommended by the Committee and directed publication of the rule in the Federal Register as a final rule.

This rule requires recipients to account for the time spent on all cases, matters, and supporting activities by their attorneys and paralegals. These requirements apply whether the case, matter, or supporting activity is funded by the Corporation or by other sources, as provided in H.R. 2076, the appropriations bill which included funds for LSC for fiscal year (''FY'') 1996. (H.R. 2076 was passed by Congress but vetoed by the President; however, the Corporation anticipates passage of legislation containing substantially similar language in the near future.) Such timekeeping is not now required under 45 CFR Part 1630, Costs Standards and Procedures.

Several comments objected to the proposed rule as time-consuming, costly and burdensome. The Corporation is mindful of the costs which this regulation will impose on its recipients. Nevertheless, despite the possibility that implementation of this rule will reduce a recipient's LSC-funded capacity for

client services, the Corporation has concluded that timekeeping by attorneys and paralegals will materially improve recipients' accountability for their funds. Stated simply, the potential benefits of timekeeping to recipients outweigh the costs. These benefits include improved supervisory information, better cost estimation in bidding for other funds, enhanced control of priority implementation by local boards of directors, and more informative reports to the Corporation, other grantors, and the public. Congress has apparently reached a similar conclusion, since a timekeeping requirement is included in § 504(10) of the House bill (H.R. 2076), § 14(a)(10)(A) of the Senate version, and § 504(a)(10)(A) of the House-Senate Conference version.

The remainder of this commentary provides a section-by-section analysis of the rule, discusses the major issues raised by comments, and notes the changes made in the regulation.

Section 1635.1 Purpose

The purpose of this rule is to ensure recipient accountability for the use of funds. Although not included as a stated purpose, the Corporation notes that, as some recipients that currently have timekeeping systems in place have found, timekeeping may be a useful management tool as well.

Section 1635.2 Definitions

This section now defines ''case,'' ''matter,'' and ''supporting activity'' as the functions of a program for which time records are required to be kept. Several comments criticized the definitions in the proposed rule as vague, confusing or incomplete, and sought more examples for guidance. The definitions have been substantially changed to address these concerns.

Section 504(a)(10)(A) would have required that records of time be maintained on ''each case or matter.'' One comment pointed out that the proposed rule failed to indicate where to record time spent on important elements of program services, such as training, intake, staff development, the preparation of desk manuals, and continuing legal education. This final rule assigns such actions to the term ''matter.'' As a result, the categories now closely parallel the terms used in new accounting standards which every recipient of LSC funding is required to follow. These new standards for the financial statements of not-for-profit organizations such as legal services programs require that annual financial statements report expenses by their functional classifications, divided into two major classes of expenses for ''program services'' and ''supporting activities.'' Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 117, ¶ 26 (June 1993) [hereafter referred to as ''SFAS 117'']. ''Program services'' are defined as actions ''that result in goods and services being distributed to beneficiaries, customers, or members that fulfill the purposes or mission for which the organization exists.'' SFAS 117 at ¶ 27. ''Supporting activities'' are defined as ''all activities of a not-for-profit organization other than program services. Generally, they include management and general, fundraising, and membership-development activities.'' SFAS 117 at ¶ 28. The revised definitions in the regulation adopt the accounting separation of ''program services'' from ''supporting activities.''

Within the program services category, separate definitions are provided for a ''case'' and a ''matter.'' The definition of ''matter'' includes both direct program services such as community legal education and also the types of actions which must be performed in order to provide direct program services in an effective and efficient manner. Time spent in training, the preparation of desk manuals, and similar undertakings is necessary and reasonable to accomplish a recipient's program service priorities, but it is often not directly allocable to a particular case or matter. Instead, the costs incurred in such uses of time are gathered together in an indirect cost pool and then allocated among the relevant program services and fund sources pursuant to 45 CFR part 1630 and generally accepted accounting principles. The Corporation has attempted to clearly delineate the actions which will fall into each category; however, if in unresolvable doubt as to the category in which a particular action belongs, the recipient should classify that action as a ''matter.''

Actions that are administrative in nature would be included in the supporting activities category. Actions such as board meetings, staff breaks, general staff meetings, researching and implementing timekeeping systems, and staff evaluations would be included in the supporting activities subcategory of ''management and general.''

Section 1635.3 Timekeeping Requirement

This section sets out the timekeeping requirement. The rule sets out the minimum requirements for a timekeeping system and is not intended to prevent recipients from implementing a system designed to collect additional information the recipient will find useful for program purposes.

The timekeeping rule is intended to require all recipients to account for the time spent by their attorneys and paralegals on all cases, matters, and supporting activities, whether the time is funded by the Corporation or by other sources. Such timekeeping records must be created contemporaneously. This means that, in most cases, records should be created no later than the end of the day. The records also must account for time in increments not greater than one-quarter of an hour, comprising all of the efforts of the attorneys and paralegals for which compensation is paid. In response to a question raised in the comments, it is noted that, although the rule contains a not less than one-quarter hour requirement, true blocks of time may be accumulated (for example, where 30 minutes is spent on one activity, the time record may reflect the 30-minute increment). Because the Corporation believes time records will be more useful to the Corporation and to the recipient if certain data are included, the content of the time records has been specified in more detail to ensure that each case has a specific and unique client name or case number, and that time spent by lawyers and paralegals on matters or supporting activities is identified separately from time spent on cases.

In addition, to avoid misunderstanding, the rule now explicitly requires that, for time spent after a time record system is implemented, the system must be able to aggregate, on request, time data in the legal problem categories that the Corporation uses for its Case Service Reports. This will ensure that recipients will be able to demonstrate their time by type of case and will assist them in estimating future resource commitments. Recipients will be able to meet this requirement, for example, by entering the legal problem category on each time record for a case or by aggregating the data of all cases of the same type through coding of each client name or case number.

Because the rule as proposed contained only an effective date and did not address the question of precisely when a timekeeping system must be implemented, the rule has been modified to add a specific time period by which a timekeeping system must be put in place. Recipients must implement a system in accordance with the rule no later than 30 days after the rule's effective date, or within 30 days

of the effective date of a grant or contract, whichever is later.

The timekeeping requirement, with its reference to 45 CFR part 1630, was read by some commentators as creating a new requirement that all cost allocations for part 1630 purposes be calculated directly from time records kept pursuant to this rule. This is not correct. Part 1630 requires that costs be allocated to cost objectives (such as grants, projects, services or other actions) in accordance with the benefits received by those cost objectives. Time records may well provide the basis for allocating costs among cost objectives. Under both part 1630 and generally accepted accounting principles, however, in appropriate situations other bases remain acceptable as well, such as number of cases, number of employees, or total direct costs. A more extended discussion of allocation bases can be found in the Supplementary Information for part 1630 as a final rule, published on August 13, 1986 (51 FR 29078–29079).

Some confusion also arose from the statement in the Supplementary Information to the proposed rule that recipients must account for 100 percent of attorney and paralegal time spent in the course of their employment, even if the time is spent outside normal business hours. The statement that recipients must account for 100 percent of attorney and paralegal time is not intended to suggest that the number of hours attorneys and paralegals work should exceed the number of hours in a normal business day or week. It is assumed that attorneys and paralegals work the number of hours necessary to perform their job duties competently and professionally. Pursuant to the rule, time records are designed to document all (100 percent) the efforts of attorneys and paralegals for which they are compensated by a recipient, regardless of whether such compensated work is performed before, during, or after a recipient's normal business hours. Moreover, since the purpose of the rule is to ensure accountability for the use of recipients' funds, it is not intended to require attorneys and paralegals to account for any time period for which they are not being compensated by a recipient for work performed on behalf of the recipient.

Section 1635.4 Administrative Provisions

The proposed rule included language advising recipients that the records should be maintained in a manner consistent with the attorney-client privilege and all applicable rules of professional responsibility. Since all actions of recipients must be consistent with the attorney-client privilege and rules of professional responsibility, upon reflection, the Corporation has determined that inclusion of specific language in the rule is not necessary. In implementing the timekeeping requirement, recipients should remain aware of the access provision and mindful of ethical precepts governing client confidentiality.

The House-Senate Conference version of H.R. 2076 directed that time records be accessible to the Corporation (§ 509(d)) and to any Federal department or agency auditing or monitoring the activities of the Corporation or of a recipient and any independent auditors or monitors receiving Federal funds to conduct such auditing or monitoring (§ 504(a)(10)(C)). The Conference version also directed that the Corporation not disclose time records it obtains except to a law enforcement official or to a bar association official conducting a disciplinary investigation (§ 509(e)). One comment suggested that the regulation should contain very similar provisions. Because the final statutory definition of those who will be entitled to access to time records either directly from the recipient or from the Corporation is still uncertain, the regulation simply provides notice that there are organizations and individuals who may have such access under statutes. On the other hand, with regard to release of such time records as the Corporation may obtain, the Board decided that it would adopt the terms of the Conference version of H.R. 2076 and included them in the final rule without waiting for enactment of the final appropriations law.

List of Subjects in 45 CFR Part 1635

Legal services, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, LSC amends 45 CFR chapter XVI by adding part 1635 as follows:

PART 1635—TIMEKEEPING REQUIREMENT

Sec.
1635.1 Purpose.
1635.2 Definitions.
1635.3 Timekeeping Requirement.
1635.4 Administrative Provisions.

Authority: 42 U.S.C. §§ 2996e(b)(1)(A), 2996g(a), 2996g(b), 2996g(e).

§ 1635.1 Purpose.

This Part is intended to improve accountability for the use of all funds of a recipient by:

(a) Assuring that allocations of expenditures of Corporation funds pursuant to 45 CFR part 1630 are supported by accurate and contemporaneous records of the cases, matters, and supporting activities for which the funds have been expended;

(b) Enhancing the ability of the recipient to determine the cost of specific functions; and

(c) Increasing the information available to the Corporation for assuring recipient compliance with Federal law and Corporation rules and regulations.

§ 1635.2 Definitions.

As used in this part—

(a) A ''case'' is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases.

(b) A ''matter'' is an action which contributes to the overall delivery of program services but does not involve direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments.

(c) A ''supporting activity'' is any action that is not a case or matter, including management and general, and fundraising.

§ 1635.3 Timekeeping Requirement.

(a) All expenditures of funds for recipient actions are, by definition, for cases, matters, or supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR part 1630.

(b) Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity.

(1) Time records must be created contemporaneously and account for time in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid.

(2) Each record of time spent must contain: for a case, a unique client name or case number; for matters or supporting activities, an identification of the category of action on which the time was spent.

(c) The timekeeping system must be implemented within 30 days of the effective date of this regulation or within 30 days of the effective date of a grant or contract, whichever is later.

(d) The timekeeping system must be able to aggregate time record information from the time of implementation on both closed and pending cases by legal problem type.

§ 1635.4 Administrative Provisions.

Time records required by this section shall be available for examination by auditors and representatives of the Corporation, and by any other person or entity statutorily entitled to access to such records. The Corporation shall not disclose any time record except to a Federal, State or local law enforcement official or to an official of an appropriate bar association for the purpose of enabling such bar association official to conduct an investigation of an alleged violation of the rules of professional conduct.

Dated: March 26, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–7822 Filed 3–29–96; 8:45 am]

BILLING CODE 7050–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1535 and 1552

[FRL–5448–7]

Acquisition Regulation; Confidential Business Information

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document amends the Environmental Protection Agency Acquisition Regulation (EPAAR) (48 CFR Chapter 15) by revising both the prescription for use of solicitation provisions and contract clauses regarding collection, use, access, treatment, and disclosure of confidential business information (CBI), and adding solicitation provisions and contract clauses on CBI.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6204.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule was published in the Federal Register (60 CFR 64408) on December 15, 1995, providing for a 60-day comment period until February 13, 1996.

Interested persons have been afforded an opportunity to participate in the making of this rule. Due consideration was given to the one comment received. The following is a summary of the comment received and the Agency's disposition of the comment.

Comment. The use by the Environmental Protection Agency and potentially other Federal agencies and contractors of confidential business information (CBI) would not be objectionable as long as proper safeguards are in place to protect CBI from improper release to a company's competitors. The proposed rule appears to provide sufficient safeguards to protect CBI from improper release with the exception of one comment and suggestion.

With respect to Section 1552.235–79, Release of Contractor Confidential Business Information, we suggest that paragraph (c), which states that the ''Agency will permit release of CBI under subparagraphs (1), (3), (5), or (9) only pursuant to a confidentiality agreement,'' be modified to include references to subparagraphs (4) and (6), to the extent that CBI is not otherwise protected by the applicable statute. The rationale for also including subparagraphs (4) and (6) is to obtain the protections afforded by a confidentiality agreement in such situations as contemplated by subparagraphs (4) and (6). An agency's release of CBI only pursuant to a properly executed confidentiality agreement should provide sufficient safeguards to protect CBI in the vast majority of situations.

Response. In practice, the Agency does not release CBI in these situations unless there has been a properly executed confidentiality agreement. The Agency has made the requested change to the proposed rule to ensure that this practice continues and so that contractors are aware that this is a condition of release of CBI to these individuals.

B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review was required by the Office of Information and Regulatory Affairs.

C. Paperwork Reduction Act

The Paperwork Reduction Act did not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, recordkeeping, or any compliance costs.

E. Unfunded Mandates

This rule will not impose unfunded mandates on state or local entities, or others.

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 1535 and 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for Parts 1535 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1535.007 is revised to read as follows:

1535.007 Solicitations.

(a) Contracting Officers shall insert the following provisions in all solicitations when the Contracting Officer has determined that EPA may furnish the contractor with confidential business information which EPA has obtained from third parties under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.).

(1) 48 CFR 1552.235–72, Control and Security of Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information; and

(2) 48 CFR 1552.235–73, Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information.

(b) Contracting Officers shall insert the following provisions in all solicitations when the Contracting Officer has determined that EPA may furnish the contractor with confidential business information which EPA has obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*)

(1) 48 CFR 1552.235–74, Control and Security of Toxic Substances Control Act Confidential Business Information, and

(2) 48 CFR 1552.235–75, Access to Toxic Substances Control Act Confidential Business Information.

2a. In section 1535.007–70, paragraphs (b) and (c) are revised and paragraphs (d) through (f) are added reading as follows:

1535.007–70 Contract clauses.

* * * * *

(b) The Contracting Officer shall insert the clause at 48 CFR 1552.235–71, Treatment of Confidential Business Information, in solicitations and contracts when the Contracting Officer has determined that in the performance of the contract, EPA may furnish confidential business information to the contractor obtained from third parties under the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 301 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.), and the provision at 48 CFR 1552.235–70, Release of Contractor Confidential Business Information. EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B require that the contractor agree to the clause entitled ''Treatment of Confidential Business Information'' before any confidential business information may be furnished to the contractor.

(c) The Contracting Officer shall insert the clause at 48 CFR 1552.235–76, Treatment of Confidential Business Information, in solicitations and contracts when the Contracting Officer has determined that in the performance of the contract, EPA may furnish the contractor with confidential business information obtained from third parties under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.). EPA regulations on confidentiality of business information in 40 CFR part 2, subpart B require that the contractor agree to the clause entitled ''Treatment of Confidential Business Information'' before any confidential business information may be furnished to the contractor.

(d) The Contracting Officer shall insert the clause at 48 CFR 1552.235–77, Data Security for Federal Insecticide, Fungicide, and Rodenticide Act, Confidential Business Information, when the contract involves access to confidential business information related to the Federal Insecticide, Fungicide, and Rodenticide Act, and the Treatment of Confidential Business Information clause (48 CFR 1552.235–71) and the Screening Business Information for Claims of Confidentiality clause (48 CFR 1552.235–70) are included.

(e) The Contracting Officer shall insert the clause at 48 CFR 1552.235–78, Data Security for Toxic Substances Control Act Confidential Business Information, when the contract involves access to confidential business information related to the Toxic Substances Control Act, and the Treatment of Confidential Business Information clause (48 CFR 1552.235–76) and Screening Business Information for Claims of Confidentiality clause (48 CFR 1552.235–70) are included.

(f) Contracting Officers shall insert the clause 48 CFR 1552.235–79, Release of Contractor Confidential Business Information, in all solicitations and contracts in order to authorize the Agency to release confidential business information under certain circumstances.

3. Subpart 1552.2 is amended to revise section 1552.235–72, and add sections 1552.235–73, through 1552.235–79 to read as follows:

1552.235–72 Control and Security of Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information (Apr 1996).

As prescribed in 1535.007(a), insert the following provision:

Control And Security of Federal Insecticide, Fungicide, And Rodenticide Act Confidential Business Information (Apr 1996).

The offeror certifies that—

—the Contractor and its employees have read and are familiar with the requirements for the control and security of Federal Insecticide, Fungicide, and Rodenticide Act confidential business information contained in the manual entitled ''Federal Insecticide, Fungicide, and Rodenticide Act Information Security Manual.'' (See also 1552.235–77 elsewhere in this solicitation.)

(End of Provision)

1552.235–73 Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information (Apr 1996).

As prescribed in 1535.007(a), insert the following provision:

Access to Federal Insecticide, Fungicide, and Rodenticide Act ConfidentialL Business Information (Apr 1996).

In order to perform duties under the contract, the Contractor will need to be authorized for access to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled ''FIFRA Information Security Manual.'' These procedures include applying for FIFRA CBI access authorization for each individual working under the contract who will have access to FIFRA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235–70, 1552.235-71, and 1552.235–77 that are appropriate to the activities set forth in the contract.

Until EPA has approved the Contractor's security plan, the Contractor may not be authorized for FIFRA CBI access away from EPA facilities.

(End of Provision)

1552.235–74 Control and Security of Toxic Substances Control Act Confidential Business Information (Apr 1996).

As prescribed in 1535.007(b), insert the following provision:

Control and Security of Toxic Substances Control Act Confidential Business Information (Apr 1996).

The offeror certifies that—

—the Contractor and its employees have read and are familiar with the requirements for the control and security of Toxic Substances Control Act confidential business information contained in the manual entitled ''Toxic Substances Control Act Confidential Business Information Security Manual.'' (See also 1552.235–78 elsewhere in this solicitation.)

(End of Provision)

1552.235–75 Access to Toxic Substances Control Act Confidential Business Information (Apr 1996).

As prescribed in 1535.007(b), insert the following provision:

Access to Toxic Substances Control Act Confidential Business Information (Apr 1996)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Toxic Substances Control Act (TSCA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled ''TSCA Confidential Business Information Security Manual.'' These procedures include applying for TSCA CBI access authorization for each individual working under the contract who will have access to TSCA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235–70, 1552.235-71, and 1552.235–78 that are appropriate to the activities set forth in the contract.

Until EPA has inspected and approved the Contractor's facilities, the Contractor may not be authorized for TSCA CBI access away from EPA facilities.

(End of Provision)

1552.235–76 Treatment of Confidential Business Information (Apr 1996).

As prescribed in 1535.007–70(c), insert the following clause:

Treatment of Confidential Business Information (Apr 1996)

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose confidential business information (CBI) to the Contractor necessary to carry out the work required under this contract. The Contractor agrees to use the CBI only under the following conditions:

(1) The Contractor and Contractor's employees shall (i) use the CBI only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than properly cleared EPA employees without the prior written approval of the Assistant General Counsel for Information Law or his/her designee; and (iii) return the CBI to the PO or his/her designee, whenever the information is no longer required by the Contractor for performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected businesses having a proprietary interest in the information.

(4) The Contractor shall not use any CBI supplied by EPA or obtained during performance hereunder to compete with any business to which the CBI relates.

(b) The Contractor agrees to obtain the written consent of the CO, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of CBI by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(End of Clause)

1552.235–77 Data Security for Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information (Apr 1996).

As prescribed in 1535.007–70(d), insert the following clause:

Data Security for Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information (Apr 1996)

The Contractor shall handle Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) confidential business information (CBI) in accordance with the contract clause entitled ''Treatment of Confidential Business Information'' and ''Screening Business Information for Claims of Confidentiality,'' the provisions set forth below, and the Contractor's approved detailed security plan.

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose FIFRA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all FIFRA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the FIFRA Information Security Manual. The manual may be obtained from the Project Officer (PO) or the Chief, Information Services Branch (ISB), Program Management and Support Division, Office of Pesticide Programs (OPP) (H7502C), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(2) The Contractor and Contractor's employees shall follow the security procedures set forth in the Contractor's security plan(s) approved by EPA.

(3) Prior to receipt of FIFRA CBI by the Contractor, the Contractor shall submit a certification statement to the Chief of the ISB, with a copy to the Contracting Officer (CO), certifying that all employees who will be cleared for access to FIFRA CBI have been briefed on the handling, control and security requirements set forth in the FIFRA Information Security Manual.

(4) The Contractor Document Control Officer (DCO) shall obtain a signed copy of the FIFRA ''Contractor Employee Confidentiality Agreement'' from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(b) The Contractor agrees that these requirements concerning protection of FIFRA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under FIFRA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in FIFRA (7 U.S.C. 136h(f)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled ''Treatment of Confidential Business Information.''

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee all documents, logs, and magnetic media which contain FIFRA CBI. In addition, each Contractor employee who has received FIFRA CBI clearance will sign a ''Confidentiality Agreement for Contractor Employees Upon Relinquishing FIFRA CBI Access Authority.'' The Contractor DCO will also forward those agreements to the EPA PO or his/her designee, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the ''Changes'' clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(End of Clause)

1552.235–78 Data security for Toxic Substances Control Act confidential business information (Apr 1996)

As prescribed in 1535.007–70(e), insert the following clause:

Data Security for Toxic Substances Control Act Confidential Business Information (Apr 1996)

The Contractor shall handle Toxic Substances Control Act (TSCA) confidential business information (CBI) in accordance with the contract clause entitled ''Treatment of Confidential Business Information'' and ''Screening Business Information for Claims of Confidentiality.''

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose TSCA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all TSCA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the TSCA CBI Security Manual. The manual may be obtained from the Director, Information Management Division (IMD), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency (EPA), 401 M Street, SW, Washington, DC 20460. Prior to receipt of TSCA CBI by the Contractor, the Contractor shall submit a certification statement to the Director of the EPA OPPT/Office of Program Management and Evaluation, with a copy to the Contracting Officer (CO), certifying that all employees who will be cleared for access to TSCA CBI have been briefed on the handling, control, and security requirements set forth in the TSCA CBI Security Manual.

(2) The Contractor shall permit access to and inspection of the Contractor's facilities in use under this contract by representatives of EPA's Assistant Administrator for Administration and Resources Management, and the TSCA Security Staff in the OPPT, or by the EPA Project Officer.

(3) The Contractor Document Control Officer (DCO) shall obtain a signed copy of EPA Form 7740–6, ''TSCA CBI Access Request, Agreement, and Approval,'' from each of the Contractor's employees who will have access to the information before the employee is allowed access. In addition, the Contractor shall obtain from each employee who will be cleared for TSCA CBI access all information required by EPA or the U.S. Office of Personnel Management for EPA to conduct a Minimum Background Investigation.

(b) The Contractor agrees that these requirements concerning protection of TSCA

CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under TSCA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in TSCA (15 U.S.C. 2613(d)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled ''Treatment of Confidential Business Information.''

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee, all documents, logs, and magnetic media which contain TSCA CBI. In addition, each Contractor employee who has received TSCA CBI clearance will sign EPA Form 7740–18, ''Confidentiality Agreement for Contractor Employees Upon Relinquishing TSCA CBI Access Authority.'' The Contractor DCO will also forward those agreements to the EPA OPPT/IMD, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the ''Changes'' clause, when:

(1) The Contractor submits a timely written request for an equitable adjustment; and,

(2) The facts warrant an equitable adjustment.

(End of Clause)

1552.235–79 Release of contractor confidential business information (Apr 1996).

As prescribed in 1535.007–70(f), insert the following clause:

Release of Contractor Confidential Business Information (Apr 1996)

(a) The Environmental Protection Agency (EPA) may find it necessary to release information submitted by the Contractor either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by EPA. Business information that is ordinarily entitled to confidential treatment under existing Agency regulations (40 CFR Part 2) may be included in the information released to these individuals. Accordingly, by submission of this proposal or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI).

(b) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to the following:

(1) To other Agency contractors tasked with assisting the Agency in the recovery of Federal funds expended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9607, as amended, (CERCLA or Superfund);

(2) To the U.S. Department of Justice (DOJ) and contractors employed by DOJ for use in advising the Agency and representing the Agency in procedures for the recovery of Superfund expenditures;

(3) To parties liable, or potentially liable, for costs under CERCLA Sec. 107 (42 U.S.C. Sec. 9607), et al, and their insurers (Potentially Responsible Parties) for purposes of facilitating settlement or litigation of claims against such parties;

(4) To other Agency contractors who, for purposes of performing the work required under the respective contracts, require access to information the Agency obtained under the Clean Air Act (42 U.S.C. 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C.1251 et seq.); the Safe Drinking Water Act (42 U.S.C. 300f et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.);

(5) To other Agency contractors tasked with assisting the Agency in handling and processing information and documents in the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to the Agency's technical evaluation panels;

(6) To employees of grantees working at EPA under the Senior Environmental Employment (SEE) Program;

(7) To Speaker of the House, President of the Senate, or Chairman of a Committee or Subcommittee;

(8) To entities such as the General Accounting Office, boards of contract appeals, and the Courts in the resolution of solicitation or contract protests and disputes;

(9) To Agency contractor employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency; and

(10) Pursuant to a court order or court-supervised agreement.

(c) The Agency recognizes an obligation to protect the contractor from competitive harm that may result from the release of such information to a competitor. (See also the clauses in this document entitled ''Screening Business Information for Claims of Confidentiality'' and ''Treatment of Confidential Business Information.'') Except where otherwise provided by law, the Agency will permit the release of CBI under subparagraphs (1), (3), (4), (5), (6), or (9) only pursuant to a confidentiality agreement.

(d) With respect to contractors, 1552.235–71 will be used as the confidentiality agreement. With respect to Potentially Responsible Parties, such confidentiality agreements may permit further disclosure to other entities where necessary to further settlement or litigation of claims under CERCLA. Such entities include, but are not limited to accounting firms and technical experts able to analyze the information, provided that they also agree to be bound by an appropriate confidentiality agreement.

(e) This clause does not authorize the Agency to release the Contractor's CBI to the public pursuant to a request filed under the Freedom of Information Act.

(f) The Contractor agrees to include this clause, including this paragraph (f), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

(End of Clause)

Dated: March 19, 1996.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 96–7750 Filed 3–29–96; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 61, No. 63
Monday, April 1, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 95–079–1]

Importation of Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the horse importation regulations to add vesicular stomatitis to the list of diseases from which a premises, and adjoining premises, must be free before a horse from that premises can be imported into the United States. This action appears necessary to prevent the introduction of vesicular stomatitis into the United States.

DATES: Consideration will be given only to comments received on or before May 31, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–079–1, 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. 95–079–1. 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 on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Associate Director, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as ''the regulations'') govern the importation into the United States of specified animals, including horses, to prevent the introduction of various animal diseases into the United States.

Under § 92.314, horses imported into the United States must be accompanied by a health certificate. The health certificate must contain certain information to ensure that the horses intended for importation into the United States are free from communicable diseases. Among other things, the health certificate must state that no cases of certain communicable diseases, including African horse-sickness, dourine, glanders, surra, epizootic lymphangitis, ulcerative lymphangitis, equine piroplasmosis, Venezuelan equine encephalomyelitis, and equine infectious anemia, have occured on the horses' premises of origin, or an adjoining premises, in the 60 days preceding the horses' importation into the United States.

We are proposing to amend the regulations by adding vesicular stomatitis to the list of diseases from which a horse's premises of origin and adjoining premises must be free before the horse may be imported into the United States. We are proposing this change because an outbreak of vesicular stomatitis in the United States could cause significant productivity losses in the horse, cattle, swine, and llama industries in the United States.

Vesicular stomatitis, a viral disease, is known for its sporadic and rapid spread among animal populations. While vesicular stomatitis is not considered either a foreign animal disease in the United States or a fatal disease, it is a disease of concern to the livestock industry and to the Animal and Plant Health Inspection Service. Animals that are infected with vesicular stomatitis develop blister-like lesions in the mouth and on the dental pad, tongue, lips, nostrils, hooves, and teats. These lesions swell and break, exposing raw tissue. This raw tissue is so painful for the infected animals that they often refuse to eat and show signs of lameness. Substantial weight loss normally follows. As a result of infection, dairy cows often develop mastitis, infection of the udder, and many go dry. As such, vesicular stomatitis represents a serious disease threat to the U.S. livestock population. Additionally, the symptoms of vesicular stomatitis are similiar to those of foot-and-mouth disease (FMD), a livestock disease with a high morbidity rate. Only laboratory tests can distinguish between vesicular stomatitis and FMD.

Although vesicular stomatitis is a serious disease threat to different types of livestock, we are proposing to restrict the importation of horses from premises, and adjoining premises, where vesicular stomatitis is present because horses imported into the United States have a greater potential for movement throughout the United States once they have been imported than most other types of livestock. Imported horses are moved to farms throughout the United States, and, over time, they are often relocated to different farms in different parts of the country. Therefore, imported horses have the potential to come into contact with, and possibly infect, a large number of other animals. Therefore, our proposal would restrict the importation of horses from premises, and adjoining premises, where vesicular stomatitis is present in order to reduce the risk of the introduction of vesicular stomatitis into the United States.

Currently, no premises in the United States are under quarantine because of the presence of vesicular stomatitis, but, during the summer of 1995, several premises in four western States were under quarantine because of the presence of vesicular stomatitis. Horses were the first animals in the United States to be affected by the most recent outbreak of vesicular stomatitis. We believe that our proposal would help prevent further occurrences of vesicular stomatitis in the United States by prohibiting the importation into the United States of horses from premises that are not free from vesicular stomatitis or from premises that are adjoining such premises. We believe that this action is necessary to protect the health of livestock in the United States.

Executive Order 12866 and Regulatory Flexibility Act

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

been reviewed by the Office of Management and Budget.

We are proposing to add vesicular stomatitis to the list of diseases from which a horse's premises of origin and adjoining premises must be free before the horse may be imported into the United States. Vesicular stomatitis is recognized internationally as a serious disease of horses, cattle, swine, and llamas. Animals that are infected with vesicular stomatitis develop lesions in the mouth and on the dental pad, tongue, lips, nostrils, hooves, and teats. These lesions swell and break, exposing raw tissue. This raw tissue is so painful for the infected animals that they often refuse to eat and show signs of lameness. Substantial weight loss normally follows. As a result of infection, dairy cows often develop mastitis, infection of the udder, and many go dry.

Many countries that import U.S. livestock and animal products could refuse to import such products from the United States if vesicular stomatitis were allowed to spread across the United States. Currently, no premises in the United States are under quarantine because of vesicular stomatitis, but as recently as the summer of 1995, several premises in four Western States were under quarantine because of vesicular stomatitis. This proposed rule would help prevent future outbreaks of this disease.

This proposed rule would involve no additional costs for U.S. horse importers, large or small. Additionally, this proposed rule should not affect the availability of horses for importation to the United States. Restrictions would only be placed on horses from specific premises.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 92.314 [Amended]

2. In § 92.314, the first sentence would be amended by adding ''vesicular stomatitis,'' immediately following ''Venezuelan equine encephalomyelitis,''.

Done in Washington, DC, this 26th day of March 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–7839 Filed 3–29–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–222–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires inspections to detect loose attach fitting bolts of the door actuator of the main landing gear (MLG), inspections to determine whether serrations are fully mated, and various follow-on corrective actions. That AD also provides for an optional terminating modification for certain requirements. That AD was prompted by reports of loose attach fitting bolts of the door actuator of the MLG. The actions specified by that AD are intended to prevent an airplane from landing with one MLG partially extended. This action would provide operators the option of terminating all of the requirements of that AD by replacing the aluminum rib fitting with a new steel rib fitting, or by modifying the rib fitting assembly and performing various follow-on actions.

DATES: Comments must be received by May 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–222–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–222–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–222–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On January 11, 1993, the FAA issued AD 93–01–14, amendment 39–8468 (58 FR 5574, January 22, 1993), applicable to all Boeing Model 727 series airplanes, to require inspections to detect loose attach fitting bolts of the door actuator of the main landing gear (MLG), inspections to determine whether serrations are fully mated, and various follow-on corrective actions. That action also provides for the termination of certain inspection requirements. That action was prompted by reports of loose attach fitting bolts of the door actuator of the MLG. The requirements of that AD are intended to prevent an airplane from landing with one MLG partially extended.

Additionally, on December 15, 1989, the FAA issued AD 90–02–19, amendment 39–6433 (55 FR 601, January 8, 1990), to require inspections of all Model 727 series airplanes to detect cracking of the actuator rib fitting of the inboard door of the MLG, and rework or replacement of any cracked fitting. That action was prompted by an incident in which the actuator rib fitting of the MLG door on a Model 727 series airplane fractured and, consequently, the left MLG of the airplane failed to extend for landing. The requirements of that AD are intended to prevent damage to the airplane caused by a failure of the landing gear to extend due to a fractured rib fitting.

Since the issuance of those AD's, the FAA has reviewed and approved Boeing Alert Service Bulletin 727–32A0399, dated July 13, 1995. The alert service bulletin describes procedures for:

1. Either a high frequency eddy current or dye penetrant inspection to detect cracking of the actuator rib fitting of the MLG.

2. Modification of the rib fitting assembly, which includes changing the existing 0.250-inch radius to a 0.42-inch radius, and repetitive high frequency eddy current or dye penetrant inspections, for findings of no cracking. The modification also includes installing new shims, nuts, bolts, lockwires, and cotter pins, as well as establishing new torque requirements. (These actions are specified in Figure 4 of the alert service bulletin.) Accomplishment of this modification and the follow-on actions would eliminate the need for all of the inspections required by AD 93–01–14.

3. Replacement of the currently installed aluminum rib fitting with a new steel rib fitting, for findings of cracking. (This action is specified in Figure 5 of the alert service bulletin.) Such replacement would eliminate the need for all of the inspections required by AD 93–01–14.

The FAA is currently proposing, in a separate rulemaking action (Docket No. 95–NM–223–AD), to mandate the inspections specified in Item 1., above, and the modification of the rib fitting assembly, specified in Item 2., above. Accomplishment of either of these actions would terminate the requirements of AD 93–01–14.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 93–01–14 to continue to require inspections of the attach fitting bolts of the door actuator of the MLG, inspections to determine whether serrations are fully mated, and various follow-on corrective actions.

This proposed AD would provide operators the option of terminating all of the inspections required by AD 93–01–14 by either replacing the currently installed aluminum rib fitting with a new steel rib fitting, or modifying the rib fitting assembly and accomplishing the follow-on actions. Such replacement or modification would also terminate the inspections required by AD 90–02–19. If accomplished, the replacement, or modification and follow-on actions, would be required to be performed in accordance with the alert service bulletin described previously.

The FAA is not proposing to mandate replacement of the currently installed aluminum rib fitting, or modification of the rib fitting assembly and follow-on actions, because the inspections required by AD 93–01–14 have consistently detected, prior to catastrophic consequences, loose attach fitting bolts of the door actuator of the MLG and serrations that are not fully mated. Service history has demonstrated that these inspections have ensured safety of the fleet adequately for a number of years.

There are approximately 1,631 Boeing Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,166 airplanes of U.S. registry would be affected by this proposed AD.

The inspections currently required by AD 93–01–14 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $69,960, or $60 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action by replacing the currently installed aluminum rib fitting with a new steel rib fitting, it would take approximately 4 work hours per airplane at an average labor rate of $60 per work hour. Required parts would cost approximately $428 per airplane. Based on these figures, the cost impact of this proposed optional terminating action on U.S. operators is estimated to be $668 per airplane.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8468 (58 FR 5574, January 22, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–222–AD. Revises AD 93–01–14, Amendment 39–8468.

Applicability: All Model 727 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 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 request approval for an alternative method of compliance in accordance with paragraph (j) 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 as indicated, unless accomplished previously.

To prevent an airplane from landing with one main landing gear (MLG) partially extended due to loose attach fitting bolts, accomplish the following:

(a) Within the next 1,500 flight cycles after October 15, 1991 (the effective date of AD 91–15–14, amendment 39–7078), inspect to detect loose attach fitting bolts of the door actuator of the MLG in accordance with paragraph III., Accomplishment Instructions, of Boeing Service Bulletin 727–32–0383, dated December 6, 1990.

(b) If any loose bolt is detected during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish either Figure 1 or 2 of Boeing Service Bulletin 727–32–0383, dated December 6, 1990.

(c) For airplanes that have accomplished the actions required by paragraph (a) of this AD prior to February 23, 1993 (the effective date of AD 93–01–14, amendment 39–8468): Prior to the accumulation of 3,700 flight cycles after accomplishing the inspection or replacement required by paragraphs (a) and (b) of this AD, or within 3 years after February 23, 1993, whichever occurs earlier, inspect to ensure that serrations of the attach fitting of the door actuator of the MLG are fully mated, and to detect loose attach fitting bolts of the door actuator of the MLG; in accordance with paragraph III., Accomplishment Instructions, of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992. Repeat this inspection thereafter at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs earlier.

(d) If serrations are not fully mated, or if any loose bolt is detected during the inspections required by paragraph (c) of this AD, prior to further flight, accomplish either Figure 1 or Figure 2 of Boeing Service Bulletin 727–32–0383, dated December 6, 1990; or Revision 1, dated January 30, 1992.

(1) If Figure 1 of either service bulletin is accomplished, repeat the inspection required by paragraph (c) of this AD at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs earlier.

(2) Accomplishment of Figure 2 of Revision 1 of the service bulletin (for all bolts); or accomplishment of Figure 2 of the service bulletin dated December 6, 1990 (for bolts 1 and 2) and accomplishment of a torque check of bolt 3 in accordance with Revision 1 of the service bulletin; constitutes terminating action for the inspection requirements of paragraph (c) of this AD.

(e) For airplanes on which the inspections required by paragraph (a) of this AD prior to February 23, 1993 (the effective date of AD 93–01–14, amendment 39–8468) have not previously accomplished the actions: Prior to the accumulation of 1,500 flight cycles after February 23, 1993, or within 18 months after February 23, 1993, whichever occurs earlier, inspect to ensure that serrations of the attach fitting bolts of the door actuator of the MLG are fully mated, and to detect loose attach fitting bolts; in accordance with paragraph III., Accomplishment Instructions, of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992. Repeat this inspection thereafter at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs earlier;

(f) If serrations are not fully mated, or if any loose bolt is detected during the inspections required by paragraph (e) of this AD, prior to further flight, accomplish either Figure 1 or Figure 2 of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992.

(1) If Figure 1 of the service bulletin is accomplished, repeat the inspection required by paragraph (e) of this AD at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs earlier.

(2) Accomplishment of Figure 2 of the service bulletin constitutes terminating action for the inspection requirements of paragraph (e) of this AD.

(g) Accomplishment of the actions specified in either paragraphs (g)(1) or (g)(2) of this AD constitutes terminating action for all of the requirements of this AD.

(1) Replace the currently installed aluminum rib fitting with a new steel rib fitting in accordance with Boeing Alert Service Bulletin 727–32A0399, dated July 13, 1995. Or

(2) Modify the rib fitting assembly in accordance with Boeing Alert Service Bulletin 727–32A0399, dated July 13, 1995, and accomplish the follow-on actions specified in Figure 4 of the alert service bulletin.

(h) As of the effective date of this AD, no person shall install an aluminum rib fitting on any airplane unless that fitting has been previously modified in accordance with Boeing Alert Service Bulletin 727–32A0399, dated July 13, 1995.

(i) 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.

(j) 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.

Issued in Renton, Washington, on March 26, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–7856 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–223–AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires inspections to detect cracking of the actuator rib fitting of the inboard door of the main landing gear (MLG); and rework or replacement of any cracked fitting. That action was prompted by reports that the MLG failed to extend for a landing due to a fractured rib fitting. This action would require inspections to detect cracking in an expanded area of the actuator rib fitting, and various follow-on actions. This action is prompted by a report of a fractured rib fitting that had been reworked in accordance with the existing AD. The actions specified by the proposed AD are intended to prevent damage to the airplane caused by a failure of the landing gear to extend due to a fractured rib fitting.

DATES: Comments must be received by May 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–223–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–223–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–223–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 15, 1989, the FAA issued AD 90–02–19, amendment 39–6433 (55 FR 601, January 8, 1990), applicable to all Boeing Model 727 series airplanes, to require inspections to detect cracking of the actuator rib fitting of the inboard door of the main landing gear (MLG); and rework or replacement of any cracked fitting with a reworked or new fitting. That action was prompted by an incident in which the actuator rib fitting of the MLG door on a Model 727 series airplane fractured and, consequently, the left MLG of the airplane failed to extend for landing. The requirements of that AD are intended to prevent damage to the airplane caused by a failure of the landing gear to extend due to a fractured rib fitting.

Additionally, on January 11, 1993, the FAA issued AD 93–01–14, amendment 39–8468 (58 FR 5574, January 22, 1993). That AD requires inspections to detect loose attach fitting bolts of the door actuator of the MLG, inspections to determine whether serrations are fully mated, and various follow-on corrective actions. The requirements of that AD are intended to prevent landing with one MLG partially extended.

Since the issuance of those AD's, the FAA has received an additional report of an MLG on a Model 727 series airplane failing to extend for landing, due to a fractured rib fitting. The broken rib fitting caused the MLG door and MLG to retract improperly (out of sequence), which led to the MLG jamming against the MLG door. That airplane had accumulated 34,038 flight hours and 22,776 landings. The fitting on that airplane had been reworked in accordance with the requirements of AD 90–02–19; no follow-on inspections of the fitting were required by that AD. Further, the area of inspection specified by AD 90–02–19 did not include the area of the fitting in which this most recent incident of cracking was found.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–32A0399, dated July 13, 1995. This alert service bulletin describes procedures for:

1. Either a high frequency eddy current or dye penetrant inspection to detect cracking in an expanded area of the actuator rib fitting of the MLG.

2. Modification of the rib fitting assembly, which includes changing the existing 0.250-inch radius to a 0.42-inch radius, and repetitive high frequency eddy current or dye penetrant inspections, for findings of no cracking. The modification also includes installing new shims, nuts, bolts, lockwires, and cotter pins, as well as establishing new torque requirements. Accomplishment of this modification and follow-on actions eliminates the need for all of the inspections required by AD 93–01–14.

3. Replacement of the currently installed aluminum rib fitting with a new steel rib fitting when cracking is found. Accomplishment of this replacement eliminates the need for all of the inspections required by AD 93–01–14.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–02–19 to require either a high frequency eddy current or dye penetrant inspection to detect cracking in an expanded area of the actuator rib fitting of the MLG, and various follow-on actions.

This proposed AD would also require modification of the rib fitting assembly, and either repetitive high frequency eddy current or dye penetrant inspections for cases in which no cracking is found. Such modification and repetitive inspections would terminate the requirements of AD 93–01–14.

This proposed AD would also require replacement of the currently installed aluminum rib fitting with a new steel rib fitting for findings of cracking. Such replacement would terminate the proposed requirement to inspect the fitting repetitively and would terminate the requirements of AD 93–01–14. The FAA is currently proposing, in a separate rulemaking action (reference Docket 95–NM–222–AD), to revise AD 93–01–14 to include this optional terminating action for the requirements of that AD.

The actions proposed by this AD would be required to be accomplished in accordance with the alert service bulletin described previously.

The FAA is not proposing to mandate replacement of the currently installed aluminum rib fittings that are not cracked. The FAA finds that modification of rib fitting assembly and follow-on actions will preclude fractured rib fittings of the MLG.

There are approximately 1,631 Boeing Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,166 airplanes of U.S. registry would be affected by this proposed AD.

The new actions that are proposed in this AD action would 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 proposed requirements of this AD is estimated to be $699,600, or $600 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6433 (55 FR 601, January 8, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–223–AD. Supersedes AD 90–02–19, Amendment 39–6433.

Applicability: All Model 727 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 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 request approval for an alternative method of compliance in accordance with paragraph (f) 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 as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) to extend for landing and subsequent damage to the airplane, accomplish the following:

(a) Perform either a high frequency eddy current or dye penetrant inspection to detect cracking of the actuator rib fitting of the MLG in accordance with Boeing Alert Service Bulletin 727–32A0399, dated July 13, 1995, at the later of the times specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 20,000 total flight cycles; or

(2) Prior to the accumulation of 1,000 flight cycles after the effective date of this AD, or within 2,500 flight cycles after the immediately preceding inspection performed in accordance with AD 90–02–19, amendment 39–6433, whichever occurs earlier.

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, modify the rib fitting assembly in accordance with Boeing Alert Service Bulletin 727–32A0399, dated July 13, 1995. Within 7,500 flight cycles after accomplishing this modification, perform either a high frequency eddy current or dye penetrant inspection to detect cracking of the modified actuator rib fitting of the MLG in accordance with the alert service bulletin. Repeat the inspection thereafter at intervals not to exceed 2,500 flight cycles, until the fitting is replaced in accordance with paragraph (d) of this AD.

(c) If any cracking is detected during the inspections required by either paragraph (a) or (b) of this AD, prior to further flight, replace the currently installed aluminum rib fitting with a new steel rib fitting, in accordance with Boeing Alert Service Bulletin 727–32A0399, dated July 13, 1995. Such replacement constitutes terminating action for the requirements of this AD.

(d) Replacement of the currently installed aluminum rib fitting with a new steel rib fitting in accordance with Boeing Alert Service Bulletin 727–32A0399, dated July 13, 1995, constitutes terminating action for the requirements of this AD.

(e) As of the effective date of this AD, no person shall install an aluminum rib fitting on any airplane unless that fitting has been previously modified in accordance with Boeing Alert Service Bulletin 727–32A0399, dated July 13, 1995.

(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, 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.

(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.

Issued in Renton, Washington, on March 26, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–7855 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 95–NM–151–AD]

Airworthiness Directives; Fokker Model F28 Series Airplanes (Excluding Fokker Model F28 Mark 0100 Series Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 series airplanes. This proposal would require replacement of certain junction fittings of the horizontal stabilizer with improved fittings. For certain airplanes, the proposal also would require replacement of the drive-fitting bushings and bolts of the horizontal stabilizer with improved bushings and bolts. This proposal is prompted by reports of stress corrosion cracking in a junction fitting lug of the horizontal stabilizer. The actions specified by the proposed AD are intended to prevent such cracking, which could result in failure of a lug and uncommanded movement of the horizontal stabilizer. This condition, if not corrected, could result in reduced controllability of the airplane.

DATES: Comments must be received by May 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–151–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–151–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–151–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F28 series airplanes. The RLD advises that it has received several reports indicating that cracking was found in the right-hand upper lug of the junction fitting of the horizontal stabilizer on these airplanes. This cracking has been attributed to stress corrosion. Such cracking can result in failure of a lug. Although ultimate load can be carried by the structure with one lug failure, uncommanded movement of the horizontal stabilizer can occur. This condition, if not corrected, could result in reduced controllability of the airplane.

Fokker has issued Service Bulletin F28/55–029, Revision 1, dated January 23, 1993, which describes procedures for replacement of aluminum 7079 junction fittings (left and right) of the horizontal stabilizer with improved junction fittings made from aluminum 7075, which is much less sensitive to stress corrosion cracking. For certain airplanes, the service bulletin also describes procedures for replacement of the drive-fitting bushings and bolts of the horizontal stabilizer with new bushings and bolts made from a different material having improved resistance to corrosion. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 92–119, dated October 23, 1992, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require replacement of aluminum 7079 junction fittings (left and right) of the horizontal stabilizer with improved fittings made from aluminum 7075. For certain airplanes, the proposed AD also would require replacement of the drive-fitting bushings and bolts of the horizontal stabilizer with new bushings and bolts made from a different material having improved resistance to corrosion. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that the compliance time specified in the Dutch airworthiness directive for accomplishment of the replacements differs from that specified in this proposed AD. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the replacements. In light of these items, the FAA has determined that 18 months for compliance is appropriate.

The FAA estimates that 14 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes on which replacement of aluminum 7079 junction fittings with improved fittings is required, the FAA estimates that it would take approximately 430 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $40,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators for replacement of aluminum 7079 fittings is estimated to be $65,800 per airplane.

For airplanes on which replacement of the drive-fitting bushings and bolts on the horizontal stabilizer with new bushings and bolts is required, the FAA estimates that it would take approximately 10 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators for replacement of the drive-fitting bushings and bolts is estimated to be $2,700 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 95–NM–151–AD.

Applicability: Model F28 series airplanes (excluding Model F28 Mark 0100 series airplanes); serial numbers 11003 through 11151 inclusive, 11991, and 11992; 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 (d) 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 as indicated, unless accomplished previously.

To prevent stress corrosion cracking of the junction fitting lug of the horizontal stabilizer, which could result in failure of the lug and uncommanded movement of the horizontal stabilizer, and subsequent reduced controllability of the airplane; accomplish the following:

(a) Within 18 months after the effective date of this AD, replace the aluminum 7079 junction fittings (left and right) of the horizontal stabilizer with improved fittings made from aluminum 7075, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F28/55–029, Revision 1, dated January 23, 1993.

(b) For airplanes on which the drive-fitting bushings and bolts of the horizontal stabilizer have not been replaced in accordance with Fokker Service Bulletin F28/55–24: Within 18 months after the effective date of this AD, replace the drive-fitting bushings and bolts of the horizontal stabilizer with new bushings and bolts, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F28/55–029, Revision 1, dated January 23, 1993.

(c) Accomplishment of the replacements required by paragraphs (a) and (b) of this AD constitute terminating action for the inspections identified as item 55–50–05 in the Fokker Structural Integrity Program (SIP) Document 28438, Part 1, revised up through October 15, 1992, which are required by AD 93–13–04, amendment 39–8617 (58 FR 38513, July 19, 1993). Once these replacements are accomplished, the life limits of the fitting lugs (identified as items 55–50–01 and 55–50–02 in the SIP Document) no longer apply.

(d) 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.

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

Issued in Renton, Washington, on March 26, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–7854 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–170–AD]

Airworthiness Directives; Fokker Model F28 Series Airplanes (Excluding Model F28 Mark 0100 Series Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 series airplanes. This proposal would require a one-time detailed visual inspection to detect cracking of the elevator gust lock housing and the gust lock support structure, and repair or replacement of cracked parts. This proposal is prompted by a report of failure of an elevator gust lock housing due to fatigue cracking. The actions specified by the proposed AD are intended to prevent fatigue cracking of the elevator gust lock housing and the gust lock support structure, which could result in loss of the elevator and the support structure, and subsequent possible loss of primary pitch control.

DATES: Comments must be received by May 9, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–170–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2796; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall

identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–170–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 series airplanes. The RLD advises that it received a report indicating that the elevator gust lock housing on a Model F28 series airplane failed during maintenance. This failure occurred after the cockpit control column was moved with the gust lock in the ''ON'' position and the hydraulic system activated. After the gust lock was disengaged, the elevator appeared to be obstructed. Results of a subsequent investigation revealed that the two upper legs of the gust lock housing had broken off, while the housing was bent towards the tension regulator quadrant. The gust lock support structure on which the two lower legs were mounted also was damaged. The cause of breakage of the gust lock housing and damage to the support structure has been attributed to fatigue cracking. Fatigue cracking of the elevator gust lock housing and the gust lock support structure, if not detected and corrected in a timely manner, could result in loss of the elevator and the support structure, and subsequent possible loss of primary pitch control.

Fokker has issued Service Bulletin F28/55–30, Revision 1, dated January 4, 1993, which describes procedures for a one-time detailed visual inspection to detect cracking of the elevator gust lock housing and the gust lock support structure, and repair or replacement of cracked parts with new or serviceable parts. The service bulletin permits further flight with cracking of the gust lock support structure, provided that cracking is within certain limits, until the structure is replaced or repaired. However, the service bulletin specifies that inspections to detect further cracking should be accomplished in the interim. The service bulletin also specifies that, if any cracking is found, use of the gust lock system is prohibited until the cracked part is replaced. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 92–101/4 (A), dated January 28, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time detailed visual inspection to detect cracking of the elevator gust lock housing and the gust lock support structure, and repair or replacement of cracked parts with new or serviceable parts. For airplanes on which cracking is found, the proposed AD also would prohibit use of the gust lock system until cracked parts are replaced. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that, unlike the procedures described in the referenced service bulletin, this proposed AD would not permit further flight with cracking detected in the gust lock support structure. The FAA has determined that, due to the safety implications and consequences associated with such cracking, all structure that is found to be cracked must be replaced or repaired prior to further flight.

The FAA estimates that 43 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,160, or $120 per airplane.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 95–NM–170–AD.

Applicability: Model F28 series airplanes, excluding Model F28 Mark 0100 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 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 as indicated, unless accomplished previously.

To prevent fatigue cracking of the elevator gust lock housing and the gust lock support structure, which could result in loss of the elevator and the support structure, and subsequent possible loss of primary pitch control, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time detailed visual inspection to detect cracking of the elevator gust lock housing and the gust lock support structure, in accordance with Fokker Service Bulletin F28/55–30, Revision 1, dated January 4, 1993.

(b) If any cracking is found, prior to further flight, repair or replace the cracked elevator gust lock housing or gust lock support structure with a new or serviceable part in accordance with Fokker Service Bulletin F28/55–30, Revision 1, dated January 4, 1993. Use of the elevator gust lock system is prohibited until cracked parts are replaced with new or serviceable parts.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–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.

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

Issued in Renton, Washington, on March 26, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–7853 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. 95N–0400]

RIN 0910–AA09

Medical Devices; Reclassification and Codification of Rigid Gas Permeable Contact Lens Solution; Soft (Hydrophilic) Contact Lens Solution; and Contact Lens Heat Disinfecting Unit

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify from class III (premarket approval) to class II (special controls) rigid gas permeable contact lens solution, soft (hydrophilic) contact lens solution, and the contact lens heat disinfection unit. Collectively, these devices are referred to as transitional contact lens care products, which include saline solutions, in-eye lubricating/rewetting drops, disinfecting and conditioning products, contact lens cleaners, and heat disinfecting units. This reclassification is in response to provisions in the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) and the Safe Medical Devices Act of 1990 (the SMDA). FDA is also amending the regulations for transitional contact lens care products to more accurately reflect the intent of the original regulation. Under the SMDA, FDA is implementing a special control that the agency has determined is necessary to provide reasonable assurance of the safety and effectiveness of the proposed reclassified contact lens care products. That special control is the availability of guidance for premarket notification submissions for these products. Elsewhere in this issue of the Federal Register, FDA is announcing the availability of a draft guidance describing the evidence that demonstrates the substantial equivalence of new contact lens care products to contact lens care products already marketed.

DATES: Written comments by June 17, 1996. The agency proposes that any final rule that may issue based on this proposal become effective 30 days after date of publication of the final rule in the Federal Register.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2205.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 321 *et seq.*), as amended by the 1976 amendments (Pub. L. 94–295) and the SMDA (Pub. L. 101–629), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) establishes three classes of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: Class I, general controls; class II, special controls; and class III, premarket approval.

The 1976 amendments broadened the definition of ''device'' in section 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified all transitional devices (i.e., those devices previously regulated as new drugs), including: Rigid gas permeable contact lens solutions; soft (hydrophilic) contact lens solutions; and contact lens heat disinfecting units, into class III (premarket approval). The legislative history of the SMDA reflects congressional concern that many transitional devices were being over regulated in class III. H. Rept. 808, 101st Cong., 2d sess. 26–27 (1990); S. Rept. 513, 101st Cong., 2d sess. 26–27 (1990). Congress amended section 520(l) of the act, (21 U.S.C. 360j(l)) to direct FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices and review the classification of those still remaining in class III to determine if the device could be reclassified into class II (special controls) or class I (general controls).

Thus, in the Federal Register of November 14, 1991 (56 FR 57960), FDA, pursuant to section 520(l)(5)(A) of the act, issued an order requiring manufacturers of transitional devices, including rigid gas permeable contact lens solution (§ 886.5918 (21 CFR 886.5918)); soft (hydrophilic) contact lens solution (§ 886.5928 (21 CFR 886.5928)); and the contact lens heat disinfection unit (§ 886.5933 (21 CFR 886.5933)), to submit to FDA a summary of, and a citation to, any information known or otherwise available to them respecting the devices, including adverse safety or effectiveness information, which has not been submitted under section 519 of the act (21 U.S.C. 360i). Manufacturers were to submit the summaries and citations to FDA by January 13, 1992. However, because of misunderstandings and uncertainties regarding the information required by the order, and whether the order applied to certain manufacturers' devices, many transitional class III device manufacturers failed to comply with the reporting requirement by January 13, 1992. Thus, in the Federal Register of March 10, 1992 (57 FR 8462), FDA extended the reporting period to March 31, 1992.

Section 520(l)(5)(B) of the act (21 U.S.C. 360j(l)(5)(B)), stated that, after the issuance of an order requiring manufacturers to submit a summary of, and citation to, any information known or otherwise available respecting the devices, but before December 1, 1992, FDA was to publish regulations either leaving the transitional class III devices in class III or reclassifying them into class I or class II. Subsequently, as permitted by section 520(l)(5)(C) of the act (21 U.S.C. 360j(l)(5)(C)), in the Federal Register of November 30, 1992 (57 FR 56586), the agency published a notice extending the period for issuing such regulations until December 1, 1993. Due to limited resources, FDA was unable to publish regulations before the December 1, 1993, deadline. Nevertheless, in accordance with sections 520(l)(5)(B) and 513(a) of the act, FDA is now proposing to reclassify rigid gas permeable contact lens solution (§ 886.5918); soft (hydrophilic) contact lens solution (§ 886.5928); and the contact lens heat disinfection unit (§ 886.5933) from class III (premarket approval) to class II (special controls). FDA does not believe that these devices can be classified into class I because general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the devices. However, FDA does believe that these devices can be classified into class II because sufficient information exists to establish special controls to provide reasonable assurance of their safety and effectiveness. The draft guidance entitled ''Premarket Notification (510(k)) Guidance Document for Contact Lens Care Products,'' the availability of which is being announced elsewhere in this issue of the Federal Register, is the special control that FDA believes is necessary to provide such assurance.

II. Description of the Devices Proposed for Reclassification and Explanation of Proposed Modifications

The proposed reclassification and modifications are described below:

A. Section 886.5918 Rigid Gas Permeable Contact Lens Care Products

FDA is proposing to change the classification title ''Rigid gas permeable contact lens solution'' to ''Rigid gas permeable contact lens care products'' to more accurately reflect the types of products classified under this regulation. Changing the word ''solution'' to ''products'' allows the agency to regulate other rigid gas permeable care products under this section.

FDA is also proposing to change the phrase ''to clean, disinfect, wet, or store a rigid gas permeable contact lens'' to ''for use in the cleaning, conditioning, rinsing, lubricating/rewetting, or storing of a rigid gas permeable contact lens'' to more accurately describe the intended use of contact lens care products rather than limit the description to solutions only. FDA does not consider this proposed modification a change in intended use for the following reasons:

1. Adding the word ''rinsing'' is proposed to accurately describe products (i.e., salines) approved under this classification for rinsing rigid gas permeable contact lenses;

2. Replacing the word ''wet'' with the phrase ''lubricating/rewetting'' is proposed to more accurately describe the intended use (i.e., in-eye) of lubricating and rewetting drops that have been approved for use with rigid gas permeable contact lenses; and

3. Replacing the word ''disinfect'' with the word ''conditioning'' is proposed because rigid gas permeable ''disinfecting'' solutions are more accurately called conditioning solutions. Not only are these solutions used to disinfect rigid gas permeable lenses, but they are also used to condition the surface of the lenses prior to insertion. The combination of these two intended uses, disinfecting and conditioning, is commonly referred to as a conditioning solution when indicated for use with rigid gas permeable lenses.

Finally, FDA is proposing to add ''This includes all solutions and tablets used together with rigid gas permeable contact lenses'' to further clarify that tablets (i.e., enzyme tablets used for periodic cleaners) are also included in this proposed reclassification. Tablets were not included in the original regulation because, at the time of its issuance, these care products were not approved for use with rigid gas permeable lenses. However, this is no longer the case.

B. Section 886.5928 Soft (Hydrophilic) Contact Lens Care Products

FDA is proposing to change the classification title ''Soft (hydrophilic) contact lens solution'' to ''Soft (hydrophilic) contact lens care products'' to more accurately reflect the intent of the original regulation. Changing the word ''solution'' to ''products'' allows the agency to regulate other soft (hydrophilic) contact lens care products (i.e., lens cases) under this section. It also allows FDA to include heat disinfecting units under this section.

FDA is also proposing to change the phrase ''to clean, disinfect, wet, or store a soft (hydrophilic) contact lens'' to ''for use in the cleaning, disinfecting, rinsing, lubricating/rewetting, or storing of a soft (hydrophilic) contact lens'' to more accurately describe the intended use of contact lens care products rather than limit the description to solutions only. FDA does not consider this modification a change in intended uses for the following reasons:

1. Adding the word ''rinsing'' is proposed because rinsing solutions have always been a part of the care regimen for soft (hydrophilic) contact lenses. FDA believes the word was inadvertently omitted from the original regulation; and

2. Replacing the word ''wet'' with the phrase ''lubricating/rewetting'' is proposed to more accurately describe the intended use (i.e., in-eye) of lubricating and rewetting drops that have been approved for use with soft (hydrophilic) contact lenses.

Finally, FDA is proposing to add ''This includes all solutions and tablets used together with soft (hydrophilic) contact lenses and heat disinfecting units intended to disinfect a soft (hydrophilic) contact lens by means of heat'' to further clarify that tablets (i.e., salt tablets used to make saline solutions, enzyme tablets used for periodic cleaners, and neutralizing tablets used to neutralize hydrogen peroxide disinfecting solution in soft

(hydrophilic) lenses) are also included in the proposed reclassification. This sentence also clarifies the fact that the heat disinfecting unit classification has been combined with the classification for soft (hydrophilic) contact lens care products.

C. Section 886.5933 Contact Lens Heat Disinfecting Unit

Finally, because FDA is proposing to classify contact lens heat disinfecting units in the same classification as other soft contact lens products, FDA is proposing to remove in its entirety the contact lens heat disinfecting unit classification (§ 886.5933), combine this classification with soft (hydrophilic) contact lens care products (§ 886.5928), and reclassify from class III (premarket approval) to class II (special controls) this proposed combined device.

III. Summary of Reasons for the Proposed Reclassification

The following are reasons in support of FDA's proposal to reclassify from class III to class II rigid gas permeable contact lens care products and soft (hydrophilic) contact lens care products, which include contact lens heat disinfecting units:

1. General controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the devices.

2. There is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the devices for their intended uses.

3. The special control, which is draft guidance entitled ''Premarket Notification (510(k)) Guidance Document for Contact Lens Care Products,'' describes the testing and information applicable to premarket notifications for the devices.

4. There is sufficient information to demonstrate that the devices are not potentially hazardous to the life, health, or well-being of the user. FDA has identified no new risks to health associated with the use of the devices, has determined that the identified potential risks to health can be addressed by using the special control (guidance), and that the probable benefits to health of the devices outweigh any probable risks to health.

FDA believes that current and future manufacturers of the devices can use the special controls draft guidance and that the safety and effectiveness of devices made by new manufacturers can be assured through the premarket notification procedures under section 510(k) of the act (21 U.S.C. 360(k)) as described in the special control draft guidance. Consequently, FDA believes that premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of these devices.

IV. Risks to Health

The risks associated with the devices proposed for reclassification have been identified through over 25 years of FDA experience in the review and evaluation of the following publicly available information: (1) Preclinical and clinical data submitted in premarket approval applications (PMA's); (2) PMA annual reports and Mandatory Device Reporting (MDR) for contact lens devices; (3) scientific literature relating to contact lens devices; and (4) information submitted under section 520(l)(5)(A) of the act. A summary of the risks to health presented by each of the devices is described below:

1. Risks associated with use of rigid gas permeable and soft (hydrophilic) contact lens care products, other than contact lens heat disinfection units include:

Eye infection, irritation, burning and stinging, discomfort or pain, redness, excessive tearing, sensitivity to light, unusual secretions, dryness or vision changes; allergic, toxic or sensitivity reactions; damaged lenses which are caused by contaminated solutions; use of contact lens care products that fail to adequately perform their intended functions; sensitizing or toxic ingredients used in contact lens care product formulations; and inadequate labeling (e.g., warnings, precautions, and directions for use) for the safe and effective use of the device.

2. Risks associated with use of contact lens heat disinfection units include:

Fire, burns, or electrical shock; eye infections; damage to lenses caused by failure of the unit to adequately perform its intended function; and inadequate labeling (e.g., warnings, precautions, directions for use) for safe and effective use of the device.

Based upon FDA's experience in evaluating publicly available data and information contained in PMA's, PMA annual reports, MDR, and scientific literature, FDA has concluded that the risks to health associated with the use of the devices could be controlled by special controls. On the basis of its review, FDA now believes that use of the rigid gas permeable contact lens care products and soft (hydrophilic) contact lens care products, including contact lens heat disinfection units, do not present a potential unreasonable risk to the public health, and that special controls in the form of guidance to 510(k) submitters would provide reasonable assurance of the safety and effectiveness of the device.

V. Summary of Data Upon Which the Proposed Reclassification is Based (1)

FDA based its proposed reclassification of contact lens care products on over 25 years of experience in the review and evaluation of publicly available preclinical and clinical data contained in: More than 100 PMA's; hundreds of PMA annual reports that included identification of adverse reactions reported for the device; the MDR data base within FDA; information submitted under section 520(l)(5)(A) of the act; and scientific literature for contact lens care products. From this experience in evaluating this information, FDA has identified the risks to health associated with these devices as listed in section IV. of this document and has developed product-specific ''special controls'' to address these risks for purposes of this reclassification proposal. On the basis of the review, FDA believes that use of the rigid gas permeable contact lens care products and soft (hydrophilic) contact lens care products, including heat disinfection units, does not present an unreasonable risk to the public health, and that the special controls will provide reasonable assurance of the safety and effectiveness of the devices.

The special control, the draft guidance entitled ''Premarket Notification (510(k)) Guidance Document for Contact Lens Care Products,'' sets forth the tests and information that FDA believes are needed to ensure the continued safety and effectiveness of contact lens care products. The guidance is organized into product specific sections that describe the information that addresses the risks associated with use of each device. In addition, the guidance will enable a manufacturer of a contact lens care product to conduct the necessary preclinical and clinical testing recommended in a 510(k) premarket notification to demonstrate substantial equivalence of the device to a legally marketed contact lens care product (predicate device).

The draft guidance outlines the types of manufacturing and chemistry, toxicology, and microbiology testing that should be completed for each device, and contains a summary of the basic requirements and suggested methods for meeting these preclinical requirements. If the results of preclinical testing demonstrate that the device will have new characteristics, clinical performance data may be needed to establish substantial equivalence. If clinical performance

data are needed, the draft guidance document provides suggested methodologies (e.g., size and scope of the study) to be included in the investigational protocol. This draft guidance document also provides general and product specific labeling guidance that identifies warnings, precautions, and directions for use that further address the risks associated with the use of these devices.

Other elements of the draft guidance include: (1) General information on the regulations and requirements for labeling contact lens care products; (2) information about 510(k) requirements relating to modifying a marketed contact lens care product; and (3) guidance for submitting a 510(k) for contact lens cases and contact lens accessories (i.e., mechanical cleaning aids and accessory cleaning pads).

The draft guidance explains that, in the event that clinical trials are necessary, manufacturers must conduct the trials in accordance with the investigational device exemption regulations in 21 CFR part 812. At this time, FDA considers clinical studies of most contact lens care products to be nonsignificant risk investigations. For nonsignificant risk investigations, approval of an institutional review board (IRB) is necessary before initiating a clinical study, and an investigational plan and informed consent document must be presented to an IRB for review and approval. Prior FDA approval is not required. However, FDA considers most clinical studies of solutions that contain new active ingredients for ophthalmic use and are intended for use directly in the eye to be significant risk investigations that would require both IRB and FDA review and approval.

VI. 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.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a proposal on small entities. Because this proposal would reduce the regulatory burdens for all manufacturers of contact lens care products covered by this proposal, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Accordingly, FDA proposes to amend the regulations in §§ 886.5918, 886.5928, and 886.5933 as set forth below.

VIII. Effective Date

FDA is proposing that any final rule that may issue based on this proposed rule become effective 30 days after date of publication of the final rule in the Federal Register.

IX. Comments

Interested persons may, on or before June 17, 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.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 886 be amended as follows:

PART 886—OPHTHALMIC DEVICES

1. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 886.5918 is revised to read as follows:

§ 886.5918 Rigid gas permeable contact lens care products.

(a) *Identification*. A rigid gas permeable contact lens care product is a device intended for use in the cleaning, conditioning, rinsing, lubricating/rewetting, or storing of a rigid gas permeable contact lens. This includes all solutions and tablets used together with rigid gas permeable contact lenses.

(b) *Classification*. Class II (Special Controls) Guidance Document: ''Premarket Notification (510(k)) Guidance Document for Contact Lens Care Products.''

3. Section 886.5928 is revised to read as follows:

§ 886.5928 Soft (hydrophilic) contact lens care products.

(a) *Identification*. A soft (hydrophilic) contact lens care product is a device intended for use in the cleaning, rinsing, disinfecting, lubricating/rewetting, or storing a soft (hydrophilic) contact lens. This includes all solutions and tablets used together with soft (hydrophilic) contact lenses and heat disinfecting units intended to disinfect a soft (hydrophilic) contact lens by means of heat.

(b) *Classification*. Class II (Special Controls) Guidance Document: ''Premarket Notification (510(k)) Guidance Document for Contact Lens Care Products.''

§ 886.5933 [Removed and Reserved]

4. Section 886.5933 *Contact lens heat disinfection unit* is removed and reserved.

Dated: March 18, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–7784 Filed 3–29–96; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 300

[FRL–5448–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Washington County landfill from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S.

EPA) Region 5 announces its intent to delete the Washington County Landfill Superfund Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that fund-financed responses under CERCLA have been implemented and U.S. EPA, in consultation with the State of Minnesota, has determined that no further response under CERCLA is necessary. U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment. In addition, based on the results of a five-year review of the remedial action completed in January 1994, the existing remedy is being upgraded to improve long-term protectiveness. The State of Minnesota will undertake any further response actions that may be necessary, using funds provided under the Minnesota Landfill Cleanup Law.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before May 1, 1996.

ADDRESSES: Comments may be mailed to Gladys Beard (SR–6J) Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region 5, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region 5 office and at the local information repository located at: Minnesota Pollution Control Agency Public Library, 520 Lafayette Rd., St. Paul, MN 55155–4194. Requests for comprehensive copies of documents should be directed formally to the Region 5 Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (SMR–7J), U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Lawrence Schmitt, Remedial Project Manager at (312) 353–6565, Gladys Beard (SR–6J) Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Don de Blasio (P–19J), Office of Public Affairs, U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–4360.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 5 announces its intent to delete the Washington County Landfill Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to Section 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete Sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(I) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This Federal Register notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the local information repository and the deletion docket.

Upon completion of the public comment period, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address each significant comment that was received. The public is welcome to contact the U.S. EPA Region 5 Office to obtain a copy of this responsiveness summary. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the Federal Register.

IV. Basis for Intended Site Deletion

The Washington County Landfill site is located within the city limits of Lake Elmo in Washington County, Minnesota. Lake Elmo is approximately nine miles northeast of St. Paul. The site occupies a 110 acre parcel, and the landfill covers 40 acres of the site. The area adjacent to the site is predominantly residential with a small amount of farming. Residences are directly adjacent to the site on the north, west, and south. There is a city park to the east of the site. Approximately 3000 people reside within a three mile radius of the site. A recreational lake, Lake Jane, is located 250 feet north of the site.

The landfill is located in a gently sloping area and is underlain by sand and gravel deposits. Ground water flow in the sand and gravel aquifer below the site is generally to the south away from Lake Jane. The site was extensively mined for sand and gravel prior to its use as a sanitary landfill during the years 1969 through 1975. The landfill was operated jointly by Washington and Ramsey Counties (''the Counties''), which accepted approximately 2.6

million cubic yards of solid waste. The solid waste is estimated to be 73% residential waste, 26% commercial waste, and 1% demolition waste.

Following landfill closure, ground water at the site was found to contain elevated levels of organic and inorganic substances in wells on and off-site, including residential wells. Volatile organic compounds (VOCs) found in residential wells were the most serious concern. The site was proposed for the NPL July 8, 1983. The listing was finalized in September 21, 1984, 49 FR 37070.

Operable Unit 1

Remedial planning activities began under the authority of the Minnesota Pollution Control Agency (MPCA) prior to finalization of the site on the National Priorities List. In 1982, MPCA requested that the Counties begin investigating the need for remedial action at the site.

On October 24, 1984, the Counties and MPCA signed a Response Order by Consent which required the following:

Installation and operation of a ground water gradient control system, which captured contaminated ground water and prevented further movement of contaminants off-site;

Installation and operation of a spray irrigation system for VOCs in the captured ground water;

Monitoring of the landfill and area ground water to ensure the effectiveness of the gradient control system and the protection of residential wells; and

Provision of safe drinking water supplies to residents whose private wells contained substances in excess of Minnesota private drinking water well criteria. An interim water supply was required immediately upon effect of the Order and a permanent supply was to be developed.

Construction of monitoring wells, a gradient control well, and the air stripping system was accomplished in sequence with the Phase I thru Phase IV investigations during 1982 and 1983. The gradient control system began full operations on December 12, 1983. The system consisted of one gradient control well near the southwest corner of the landfill, designed to extract 200 gallons per minute, and a spray irrigation area in the southeast portion of the site. The spray irrigation area consisted of an area of 1.9 acres with sandy soils. This area was believed to be contained within the capture zone of the gradient control system. Twenty-seven monitoring wells were installed and an additional 25 residential wells were being monitored for the presence of contaminants.

The Phase V report in February 1984 provided the first evaluation of the performance of the system. Regular evaluations, modifications, and improvements to the system continued after 1984. During that time, the gradient control system was expanded to include 4 wells capable of extracting a maximum of 400 gallons per minute, berms were constructed and other improvements were made to increase infiltration of treated ground water at the treatment area, and an off-site discharge was added for some extracted ground water. A backup treatment area was added and used while the primary treatment area was down for maintenance. The backup treatment area is not currently in use. Finally, the number of monitoring wells was expanded to 38.

The interim alternative water supply consisted of bottled water for 4 residences, which was implemented immediately after the Response Order was effective in 1984. Planning for a permanent water supply for affected residents resulted in the report: ''Long Term Drinking Water Supply Plan for Washington County Sanitary Landfill No. 1'' dated October 1985. On July 7, 1986, MPCA issued a Minnesota Enforcement Decision Document (MEDD) which approved the use of activated carbon filters for the residences with drinking water well advisories issued by the Minnesota Department of Health. The activated carbon filters for the 4 affected residences were installed immediately after the MEDD was effective in 1986.

Operable Unit 1 is a containment remedy, with treatment of the extracted ground water. The reports provided by the Counties documented the results of regular sampling of monitoring wells and residential wells, which indicated that the gradient control system adequately contained the ground water contamination on site. Remedial action implementation for Operable Unit 1 ground water and drinking water measures was conducted by the Counties under MPCA authority and oversight prior to the issuance of U.S. EPA's Unilateral Administrative Order on January 16, 1992. U.S. EPA's Unilateral Administrative Order required the Counties to continue the implementation of MPCA's previous requirements. Under the requirements of MPCA's terminated Response Order by Consent, there were no cleanup levels or termination provisions for this operable unit at the site.

Quality Assurance/Quality Control (QA/QC) measures for ground water sampling and analysis were specified in MPCA's Response Order by Consent. U.S. EPA adopted these same measures in its Order. QA/QC for all other activities was monitored by MPCA, and all documentation is contained in correspondence between the Counties and MPCA or in internal MPCA memos and reports.

In September 1992, a soil gas survey conducted at the site by the MPCA discovered explosive levels of landfill gases in soils at the western boundary of the site. After further investigation confirmed that there was significant off-site migration of explosive gases, U.S. EPA issued a First Amended Unilateral Administrative Order on February 17, 1993. This Order required the Counties to control landfill gas migration so that explosive levels are not exceeded at the property boundary.

A barrier extraction vent system was constructed along the west side of the landfill to intercept migrating gases; this system was completed in December 1993. The system consisted of 11 extraction vents connected to a blower system. The gas control system effectively controlled gas migration from the western portion of the site immediately. The mixture of air and landfill gases collected by the system was found to be safe for discharge to the atmosphere without treatment. Off-site areas which contained elevated levels of explosive gas in soils were monitored and gas levels were found to slowly dissipate. Monitoring of basements in nearby residences for gas accumulation was initiated shortly after discovery of the gas, and no exceedences of safe levels occurred.

Remedial action implementation for Operable Unit 1 explosive gas control measures was conducted by the Counties under U.S. EPA authority and MPCA oversight. QA/QC measures for landfill gas sampling and analysis were specified in the approved work plans. U.S. EPA approved a Remedial Action Report documenting the QA/QC for completion of construction activities for explosive gas control in March 1995. This report describes the activities completed pursuant to the First Amended Unilateral Administrative Order.

Operable Unit 2

Based on the results of residential well sampling conducted during 1988 and 1989, MPCA requested the Minnesota Department of Health (MDH) to reassess the health risks to residents. As a result, the MDH issued drinking water well advisories to 10 residences. MPCA subsequently requested the Counties to re-evaluate the long-term drinking water supply needs of affected residences. The Counties submitted the report ''Long-Term Drinking Water Supply Plan, Washington County

Sanitary Landfill No. 1'' dated June 30, 1990. This report constitutes the Remedial Investigation/Feasibility Study for Operable Unit 2. MPCA executed a Record of Decision (ROD) requiring the construction of a public water supply system to serve the 10 residences on September 27, 1990. U.S. EPA concurred with this ROD on November 15, 1990.

Although not required by the ROD, the Counties elected to provide the alternate water supply to 73 additional residences within a service area which surrounds the site. The service area was developed to include all residences which might possibly be affected by the site. The additional work also includes the abandonment and sealing of 68 residential wells within the service area, since continued use of these could possibly contribute to further movement of contaminants away from the site. Construction of the water supply system was initiated in June 1991 and connection of the 10 residences with drinking water advisories to the system was completed in December 1991. Connection of 72 of the remaining 73 residences was completed by June 1992.

A Remedial Action Report dated September 1992 documents construction activities for Operable Unit 2. The report describes both the activities required by the ROD and the additional work performed by the Counties in order to increase the protectiveness of the remedy.

Community relations activities conducted by MPCA for Operable Unit 2 began on July 27, 1990, when the RI/FS and Proposed Plan were released to the public. The documents were placed in an information repository at the Lake Elmo Branch of the Washington County Public Library, 3459 Lake Elmo Avenue, Lake Elmo, MN and notices published in local newspapers. A public comment period was open from July 31, 1990 thru August 31, 1990, and a public meeting was held on August 14, 1990. A responsiveness summary was included with the ROD.

Remedial action implementation for Operable Unit 2 was conducted by the Counties under MPCA authority and oversight. The MDH reviewed plans and specifications for the installation of the public water supply system and the sealing of residential wells. Documentation of QA/QC for this operable unit is contained in the Remedial Action Report.

Operable Unit 2 is an alternate water supply, and there are no cleanup levels for this activity. The Remedial Action Report documents that the system was properly installed and tested, and is functioning. The water supply system is connected to the City of Oakdale's distribution system. Lake Elmo and Oakdale are jointly responsible for maintaining the distribution system and assuring the quality of the drinking water delivered to the residents. Operable Unit 2 is completed and there are no operation and maintainance (O&M) requirements for the alternate water supply system. Responsibility for routine operation of the water supply system has been assumed by the local municipalities.

The QA/QC program utilized throughout this remedial action has been sufficiently rigorous and adequately complied with to enable the determination by U.S. EPA that all activities have been correctly carried out and all results accurately reported. U.S. EPA is thereby assured of the satisfactory execution of the remedial action consistent with MPCA's Response Order by Consent, MEDD, and Record of Decision, as well as U.S. EPA's 1992 and 1993 Unilateral Administrative Orders.

Five-Year Review

Hazardous substances will remain on-site above levels that will allow unrestricted use and unrestricted exposure, and CERCLA Section 121 provides that reviews will be performed every five years for remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure. The first Five-Year Review was completed in January 1994. U.S. EPA and MPCA concluded that the remedy has been reasonably effective in limiting further uncontrolled releases of contaminants to the environment. However, the inadequacies documented in the review indicated the need for modifications to the remedy. The remedy was not found to be sufficiently protective of human health and the environment and as operated unlikely to be cost-effective for the long-term. Specific recommendations follow:

Long-Term Water Supply

U.S. EPA and MPCA recommended that the long-term water supply system remedy continue as it currently exists. The public water supply along with well abandonment continued to provide an alternative safe, long-term source of water to the owners of residences near the landfill who were issued drinking water well advisories by the State.

Ground Water Remedial Action

The long-term need for a ground water remedial action was found to be related to recommendations for closure and post-closure as described below. A final landfill cover combined with a long-term landfill gas extraction and treatment system, if necessary, would reduce long-term reliance on the current gradient control well and treatment system. However, in the short-term, a ground water gradient control well and treatment system would continue to be necessary at the Site. The need for a gradient control system should be evaluated at least on an annual basis.

U.S. EPA and MPCA recommended that the ground water and treatment system be modified to utilize either an air stripper or granular activated carbon filtration system prior to spray irrigation. Winter spraying will be halted and storage capacity of effluent will be provided if the effluent cannot be properly treated.

Ground Water Monitoring Well Network

U.S. EPA and MPCA recommended that the existing ground water and ground water monitoring plan used to evaluate the performance of the system be maintained, with the addition of several monitoring wells.

Landfill Closure and Post-Closure Requirements

U.S. EPA and MPCA recommended that a final landfill cover be installed to current MPCA standards. A final landfill cover should limit infiltration of precipitation into the fill and help to reduce leachate production. The reduction of leachate should in turn reduce the amount of loading to ground water at the landfill site. Reduction of the moisture in the fill should also help to reduce the bacteriological activity in the fill, thus reducing the rate of methane production.

Minnesota Landfill Cleanup Law

In 1994, the Legislature of the State of Minnesota enacted the Landfill Cleanup Law, Minnesota Laws 1994, ch. 639, codified at Minnesota Stat. § § 115B.39 to 115B.46 (the Act), authorizing the Commissioner of the MPCA to assume responsibility for future environmental response actions at qualified landfills that have received notices of compliance from the Commissioner. Additionally, the Act established funds to enable the MPCA to perform all necessary response, operation, and maintenance at such landfills.

A notice of compliance was issued by MPCA for the Washington County Landfill Site on November 21, 1995. MPCA has since assumed all responsibility for the Washington County Landfill under the Act. This includes operating the ground water gradient control and gas control systems

as well as the implementation of the recommendations of the Five-Year Review. Therefore, no further response actions under CERCLA are appropriate at this time. Consequently, U.S. EPA proposes to delete the site from the NPL.

Dated: March 18, 1996.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 96–7745 Filed 3–29–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[I.D. 032196D]

Northeast Multispecies Fishery; Amendment 7; Resubmission of Disapproved Measure

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has revised a management measure concerning additional days-at-sea (DAS) for vessels enrolled in the Large Mesh Individual DAS category in Amendment 7 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). The original measure was disapproved. A revised version of that measure has been submitted and accepted for Secretarial review. The intended effect of this measure is to promote conservation by providing an equitably applied incentive to use nets constructed of mesh that are larger than the minimum size.

DATES: Comments on the revised portion of Amendment 7 must be received on or before April 19, 1996.

ADDRESSES: Send comments to Dr. Andrew A. Rosenberg, Regional Director, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799. Mark the outside of the envelope ''Comments on large-mesh individual DAS vessels.''

Copies of the original Amendment 7 and related documents are available from the New England Fishery Management Council, 5 Broadway (U.S. Rte. 1), Saugus, MA, 01906–1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: Amendment 7 was prepared by the Council and submitted to the Secretary of Commerce (Secretary) for review under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act requires the Secretary to approve, disapprove, or partially disapprove FMPs or amendments, based upon a determination of consistency with national standards and other applicable laws. On February 14, 1996, the Secretary announced disapproval of three measures contained in Amendment 7: The additional allowance of DAS for trawl vessels enrolled in the Individual DAS category that use exclusively 8–inch (20.32 cm) mesh; the 300–lb (136.1–kg) possession allowance of regulated species for vessels that use 8–inch (20.32 cm) mesh in an exempted fishery; and the establishment of a limited access category for vessels that fished in the Possession Limit open access category under Amendment 5. The remainder of Amendment 7 was published as a proposed rule on March 5, 1996 (61 FR 8492).

Pursuant to section 304(b)(3)(A) of the Magnuson Act, the Council has resubmitted two of the three measures originally disapproved. One of the resubmitted measures would give additional groundfish DAS to all groundfish vessels fishing exclusively with large mesh and that elect to fish under the Large Mesh Individual DAS category under Amendment 7 to the FMP. The Council remedied the defect that led to preliminary disapproval by clarifying that the proposed measure to increase fishing time in the individual category would apply to all vessels using large mesh, whether they are trawl vessels or gillnet vessels.

NMFS, on behalf of the Secretary, disapproved a second resubmitted measure that would have allowed a 300–lb (136.1–kg) regulated species possession limit for vessels fishing with 8–inch (20.32–cm) mesh in an exempted fishery. This measure was disapproved before publishing this notice of availability as authorized under section 304(a)(1)(A)(ii) of the Magnuson Act.

Regulations proposed by the Council to implement the resubmitted measure for Amendment 7 to the FMP are scheduled to be published within 15 days.

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

Dated: March 27, 1996.

Richard W. Surdi,

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

[FR Doc. 96–7887 Filed 3–27–96; 4:28 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 63
Monday, April 1, 1996

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

Commodity Credit Corporation

Bylaws of Corporation

The Bylaws of the Commodity Credit Corporation, amended February 5, 1996, are as follows:

Offices

1. The principal office of the Corporation shall be in the City of Washington, District of Columbia, and the Corporation shall also have offices at such other places as it may deem necessary or desirable in the conduct of its business.

Seal

2. There is impressed below the official seal which is hereby adopted for the Corporation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.

Meetings of the Board

3. Regular meetings of the Board shall be held, whenever necessary, in the Board meeting room in the U.S. Department of Agriculture in the City of Washington, D.C. Notice of such meetings shall be provided in the same manner as is specified for special meetings in Paragraph 4. No regular meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

4. Special meetings of the Board may be called at any time by the Chairman, the Vice Chairman, or by the President, or the Executive Vice President and shall be called by the Chairman, the Vice Chairman, the President, or the Executive Vice at the written request of any five Members. Notice of special meetings shall be given either personally or by mail (including intradepartmental mail channels of the Department of Agriculture or interdepartmental mail channels of the Federal Government) or by mailgram, and notice by telephone shall be personal notice. Any Member may waive in writing such notice as to himself, whether before or after the time of the meeting, and the presence of a Member at any meeting shall constitute a waiver of notice of such meeting. No notice of an adjourned meeting need be given. Any and all business may be transacted at any special meeting unless otherwise indicated in the notice thereof. No special meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

5. The Secretary of Agriculture shall serve as Chairman of the Board. The Deputy Secretary of Agriculture shall serve as Vice Chairman of the Board and, in the absence or unavailability of the Chairman, shall preside at meetings of the Board. In the absence or unavailability of the Chairman and the Vice Chairman, the President of the Corporation shall preside at meetings of the Board. In the absence or unavailability of the Chairman, the Vice Chairman, and the President, the Members present at the meeting shall designate a Presiding Officer.

6. At any meeting of the Board a quorum shall consist of five Members. The act of a majority of the Members present at any meeting at which there is a quorum shall be the act of the Board.

7. The General Counsel of the Department of Agriculture, whose office shall perform all legal work of the Corporation, and the Associate General Counsel in the Office of the General Counsel who is in immediate charge of legal work for the Corporation shall, as General Counsel and Associate General Counsel of the Corporation, respectively, attend meetings of the Board.

8. The Executive Vice President, the Vice President who is the Associate Administrator of the Farm Service Agency, and the Secretary shall attend meetings of the Board. Each of the other Vice Presidents and Deputy Vice Presidents and the Controller shall attend meetings of the Board during such time as the meetings are devoted to the consideration of matters for which such officer is responsible.

Compensation of Board Members

9. The compensation of each Member shall be prescribed by the Secretary of Agriculture. Any Member who holds another office or position under the Federal Government, the compensation for which exceeds that prescribed by the Secretary of Agriculture for such Member, may elect to receive compensation at the rate provided for such other office or position in lieu of compensation as a Member.

Officers

10. The officers of the Corporation shall be a President, Vice Presidents, and Deputy Vice Presidents as hereinafter provided for, a Secretary, a Controller, a Treasurer, a Chief Accountant, and such additional officers as the Secretary of Agriculture may appoint.

11. The Under Secretary of Agriculture for Farm and Foreign Agricultural Services shall be the ex officio President of the Corporation.

12. The following officials of the Farm Service Agency (hereinafter referred to as FSA), the Foreign Agricultural Service (hereinafter referred to as FAS), the Food and Consumer Service (hereinafter referred to as FCS), and the Agricultural Marketing Service (hereinafter referred to as AMS) shall be ex officio officers of the Corporation:

Administrator, FSA; Executive Vice President.
Administrator, AMS; Vice President.
Administrator, FAS; Vice President.
Administrator, FCS; Vice President.
General Sales Manager, FAS; Vice President.
Associate Administrator, FSA; Vice President.
Deputy Administrator, Program Delivery and Field Operations, FSA; Deputy Vice President.
Deputy Administrator, Commodity Operations, FSA; Deputy Vice President.
Deputy Administrator, Management, FSA; Deputy Vice President.
Deputy Administrator, Farm Programs, FSA; Deputy Vice President.
Director, Economic and Policy Analysis Staff, FSA; Deputy Vice President.
Executive Assistant to the Administrator, FSA; Secretary.
Director, Corporate Affairs Staff, Office of the Administrator, FSA; Deputy Secretary.
Director, Financial Management Division, FSA; Controller.
Deputy Director, Financial Management Division, FSA; Treasurer.
Chief, Financial Accounting and Reporting Branch, Financial Management Division, FSA; Chief Accountant.

The person occupying, in an acting capacity, any position listed in this paragraph shall, during his occupancy of such position, act as the corresponding officer of the Corporation.

13. Officers who do not hold office ex officio shall be appointed by the Secretary of Agriculture and shall hold office until their respective appointments shall have been terminated.

The President

14. (a) The President shall have general supervision and direction of the Corporation, its officers and employees.

(b) The President shall establish and direct an Office of the Secretariat. Such office shall be responsible for obtaining or developing, as the President determines, information on major program or policy proposals submitted to the Board.

The Vice Presidents

15. (a) The Executive Vice President shall be the chief executive officer of the Corporation and shall be responsible for submission of all Corporation policies and programs to the Board. Except as provided in paragraphs (b), (c), (d), and (e) below, the Executive Vice President shall have general supervision and direction of the preparation of policies and programs for submission to the Board, of the administration of the policies and programs approved by the Board, and of the day-to-day conduct of the business of the Corporation and of its officers and employees.

(b) The Vice President who is the Administrator, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. He shall also have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FAS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(c) The Vice President who is Administrator, AMS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of AMS. He shall also perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(d) The Vice President who is the General Sales Manager, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. He shall also have responsibility for the administration of those operations of the Corporation, under the policies and programs approved by the Board, which are carried out through facilities and personnel of FAS. He shall also perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(e) The Vice President who is the Administrator, FCS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FCS. He shall also perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

16. The Vice President who is the Associate Administrator, FSA, and the Deputy Vice Presidents shall assist the Executive Vice President in the performance of his duties and the exercise of his powers to such extent as the President or the Executive Vice President shall prescribe, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, the President of the Corporation, or the Executive Vice President of the Corporation.

The Secretary

17. The Secretary shall attend and keep the minutes of all meetings of the Board; shall attend to the giving and serving of all required notices of meetings of the Board; shall sign all papers and instruments to which his signature shall be necessary or appropriate; shall attest the authenticity of and affix the seal of the Corporation upon any instrument requiring such action and shall perform such other duties and exercise such other powers as are commonly incidental to the Office of Secretary as well as such other duties as may be prescribed, from time-to-time, by the President or the Executive Vice President.

The Controller

18. The Controller shall have charge of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements, claims activities, and formulation of prices in accordance with established policies; and shall perform such other duties as may be prescribed, from time-to-time, by the President or the Executive Vice President.

The Treasurer

19. (a) The Treasurer shall assist the Controller in the administration of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements, claims activities, and formulation of prices in accordance with established policies; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time-to-time, by the Controller, the President, or the Executive Vice President.

(b) The Treasurer, under the general supervision and direction of the Controller, shall also have charge of the custody, safekeeping and disbursement of all funds of the Corporation; shall designate qualified persons to authorize disbursement of corporate funds; shall direct the disbursement of funds by disbursing officers of the Corporation or by the Treasurer of the United States, Federal Reserve Banks, and other fiscal agents of the Corporation; shall be responsible for documents relating to the general financing operations of the Corporation, including borrowings from the United States Treasury, commercial banks and others; shall arrange for the payment of interest on the capital stock of the Corporation; and shall coordinate and give general supervision to the claims activities of the Corporation and have authority to collect all monies due the Corporation, to receipt therefor, and to deposit same for the account of the Corporation.

The Chief Accountant

20. The Chief Accountant, under the general supervision and direction of the Controller, shall have charge of the general books and accounts of the Corporation and the preparation of financial statements and reports. He shall be responsible for the initiation, preparation and issuance of policies and practices related to accounting matters and procedures, including official inventories, records, accounting and related office procedures where standardized, and adequate subsidiary records of revenues, expenses, assets and liabilities; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time-to-time, by the Controller.

Other Officials

21. Except as otherwise authorized by the Secretary of Agriculture or the Board, the operations of the Corporation shall be carried out through the facilities and personnel of FSA, FAS, FCS, and AMS in accordance with any assignment of functions and responsibilities made by the Secretary of Agriculture and, within his respective agency or office, by the Administrators of FSA, FAS, FCS, or AMS, or the General Sales Manager, FAS.

22. The Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA shall be Contracting Officers and executives of the Corporation in general charge of the activities of the Corporation carried out through their respective divisions or offices. The responsibilities of such Directors in carrying out activities of the Corporation, which shall include the authority to settle and adjust claims by and against the Corporation arising out of activities under their jurisdiction, shall be discharged in conformity with these Bylaws and applicable programs, policies, and procedures.

Contracts of the Corporation

23. Contracts of the Corporation relating to any of its activities may be executed in its name by the Secretary of Agriculture or the President. The Vice Presidents, the Deputy Vice Presidents, the Controller, the Treasurer, and the Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA may execute contracts relating to the activities of the Corporation for which they are respectively responsible.

24. The Executive Vice President and, subject to the written approval by such Executive Vice President of each appointment, the Vice Presidents, the Deputy Vice Presidents, the Controller, and the Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA may appoint, by written instrument, such Contracting Officers as they deem necessary, who may, to the extent authorized by such instrument, execute contracts in the name of the Corporation. A copy of each such instrument shall be filed with the Secretary.

25. Appointments of Contracting Officers may be revoked by written instrument or instruments by the Executive Vice President or by the official who made the appointment. A copy of each instrument shall be filed with the Secretary.

26. In executing a contract in the name of the Corporation, an official shall indicate his title.

Annual Report

27. The Executive Vice President shall be responsible for the preparation of an annual report of the activities of the Corporation, which shall be filed with the Secretary of Agriculture and with the Board.

Amendments

28. These Bylaws may be altered, amended or repealed by the Secretary of Agriculture. They may also be altered, amended or repealed by the Board at any regular or special meeting of the Board if: (1) the Secretary of Agriculture approves such action; and (2) in the case of action taken at a special meeting of the Board, notice of the proposed alternation, amendment or repeal was contained in the notice of such special meeting.

Approval of Board Action

29. The actions of the Board shall be subject to the approval of the Secretary of Agriculture.

I, Greg Billings, Secretary, Commodity Credit Corporation, do hereby certify that the above is a full, true, and correct copy of the Bylaws of Commodity Credit Corporation, as amended February 5, 1996.

In witness whereof I have officially subscribed my name and have caused the corporate seal of the said Corporation to be fixed this sixth day of March, 1996.

Greg Billings,

Secretary, Commodity Credit Corporation.

[FR Doc. 96–7808 Filed 3–29–96; 8:45 am]

BILLING CODE 3410–05–P

Food and Consumer Service

Food Stamp Program; Agency Information Collection Activities: Proposed Collection, Comment Request—Federal Collection of State Plan of Operations, Operating Guidelines and Forms

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Consumer Service (FCS) is publishing for public comment a

summary of a proposed information collection. The proposed collection is an extension of collection currently approved under OMB No. 0584–0083.

DATES: Comments on this notice must be received by May 31, 1996, to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Joseph H. Pinto, Chief, State Administration Branch, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Copies of the estimate of the information collection can be obtained by contacting Mr. Pinto

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 will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to 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.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Joseph H. Pinto, telephone number (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Operating Guidelines, Forms and Waivers.

OMB Number: 0584–0083.

Expiration Date: July, 1996.

Type of Request: Extension of a currently approved collection.

Abstract: In accordance with section 11(e) of the Food Stamp Act of 1977, as amended, the State agencies are required to submit a Plan of Operation specifying the manner in which the Food Stamp Program will be conducted. The State plan of operations, in accordance with current rules at 7 CFR 272.2, consists of a Federal/State Agreement, annual budget and activity statements, and specific attachments (such as plans if the State elects to conduct program information activities or provide nutrition educational services). State Plans of Operation are a one-time effort with updates that are provided as necessary.

Under section 16 of the Food Stamp Act of 1977, as amended, the Secretary is authorized to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the Food Stamp Program. Under corresponding Food Stamp Program regulations at 7 CFR 272.2, the State agencies must submit annually to FCS for approval, a Budget Projection Statement (Form FCS–366A), which projects the total costs for major areas of Food Stamp Program operations, and a Program Activity Statement (Form FCS–366B), which provides a summary of Food Stamp Program operations during the preceding fiscal year. The reports are required to substantiate the costs the State agency expects to incur during the next fiscal year. Form 366A is submitted annually by August 15 and Form FCS 366B must be submitted no later than 45 days after the end of each State agency's fiscal year.

Under section 11(o) of the Food Stamp Act of 1977, as amended, each State agency was required to develop a plan, no later than October 1, 1987, for implementing an automated date processing (ADP) and information retrieval system to administer the Food Stamp Program. Corresponding Food Stamp Program regulations at 7 CFR 277.18 require that a written plan of actin, called an Advance Planning Document (APD), be prepared to acquired proposed ADP services, systems or equipment. The frequency of the APD submissions is at the discretion of the State agencies.

Under section 7(i) of the Food Stamp Act of 1977, as amended, the Secretary of Agriculture is authorized to permit State agencies to implement on-line electronic benefit transfer (EBT) systems. The Secretary is authorized to establish standards for the required testing prior to implementation of any EBT system and analysis of the results of implementation in a limited pilot project area before expansion of the system. Any State requesting funding for an EBT system must submit an APD.

Respondents: State agencies that administer the Food Stamp Program.

Number of Respondents: 53.

Estimated Number of Responses per Respondent:

Plan of Operation Updates: 53 States agencies once a year.

Form FCS–366A: 53 State agencies once a year.

Form FCS–366B: 53 State agencies once a year.

Advance Planning Documents: 25 State agencies once a year.

Advance Planning Documents for EBT Systems: 35 State Agencies once a year.

EBT Reporting: 9 State agencies reporting four times a year.

Estimate of Burden:

Plan of Operation Updates: The State agencies submit Plan updates at an estimate of 10 hours per respondent, or 530 total hours.

Form FCS–366A: The State agencies submit Form 366A at an estimate of 13 hours per respondent, or 689 total hours.

Form FCS–366B: The total burden for the collection of information for Form FCS–366B and is 1,526. Forty-two State agencies submit Form FCS–366B report automatically at an estimate of 18 hours per respondent, or 756 total hours. Eleven State agencies submit Form FCS–366B manually at an estimate of 70 hours per respondent or 770 total hours.

Advance Planning Documents: Approximately 25 State agencies submit an ADP each year at an estimate of 15 hours per respondent or 375 total hours.

Advance Planning Documents for EBT Systems: Approximately 35 State agencies submit an ADP for EBT at an estimate of 45 hours per respondent, or 1,575 total hours.

EBT Reporting: Approximately 9 State agencies with operational EBT systems provide additional information about their EBT systems. The State agencies submit a report approximately 4 times a year at an estimate of one hour per response, or 36 total hours.

Estimated Total Annual Burden on Respondents. The revised annual reporting and recordkeeping burden for OMB No. 0584–9983 is estimated to be 4,731. This estimate is a slight reduction from the currently approved burden of 4,799.

Dates: March 26, 1996.

William E. Ludwig,

Administrator.

[FR Doc. 96–7869 Filed 3–29–96; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades PIEC Advisory Committee will meet on May 9, 1996 in the Wenatchee National Forest Supervisor's Office, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 4 p.m. This meeting will include discussion of Forest Health and advisory committee process. All Eastern Washington Cascades Province

Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801–5933, 509–662–4335.

Dated: March 13, 1996.

Paul Hart,

Designated Federal Official, Wenatchee National Forest.

[FR Doc. 96–7789 Filed 3–29–96; 8:45 am]

BILLING CODE 3410–11–M

Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yakima PIEC Advisory Committee will meet on April 15, 1996 at the Cle Elum Ranger District Office, 803 W. 2nd Street, Cle Elum, Washington. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. This meeting will conclude discussion of the ten key issues addressed by the Snoqualmie Pass Adaptive Management Area Environmental Impact Statement. If time allows, further discussion of management of dry eastside forest ecosystem will occur. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801–5933, 509–662–4335.

Dated: March 11, 1996.

Paul Hart,

Designated Federal Official, Wenatchee National Forest.

[FR Doc. 96–7791 Filed 3–29–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Mid-Iowa (IA) Area and the State of Oregon

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designations of Mid-Iowa Grain Inspection, Inc. (Mid-Iowa), and the Oregon Department of Agriculture (Oregon) will end September 30, 1996, according to the Act, and GIPSA is asking persons interested in providing official services in the Mid-Iowa and Oregon areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before May 1, 1996.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Mid-Iowa, main office located in Cedar Rapids, Iowa, and Oregon, main office located in Pendleton, Oregon, to provide official inspection services under the Act on October 1, 1993.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Mid-Iowa and Oregon end on September 30, 1996.

The geographic area presently assigned to Mid-Iowa, in the State of Iowa, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Winneshiek and Allamakee County lines;

Bounded on the East by the eastern Allamakee County line; the eastern and southern Clayton County lines; the eastern Buchanan County line; the northern and eastern Jones County lines; the eastern Cedar County line south to State Route 130;

Bounded on the South by State Route 130 west to State Route 38; State Route 38 south to Interstate 80; Interstate 80 west to U.S. Route 63; and

Bounded on the West by U.S. Route 63 north to State Route 8; State Route 8 east to State Route 21; State Route 21 north to D38; D38 east to State Route 297; State Route 297 north to V49; V49 north to Bremer County; the southern Bremer County line; the western Fayette and Winneshiek County lines.

The geographic area presently assigned to the State of Oregon pursuant to Section 7(f)(2) of the Act is the entire State of Oregon, except those export port locations within the State which are serviced by GIPSA.

Interested persons, including Mid-Iowa and Oregon, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning October 1, 1996, and ending September 30, 1999. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 20, 1996

Neil E. Porter

Director, Compliance Division.

[FR Doc. 96–7485 Filed 3–29–96; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24–96]

Foreign-Trade Zone 126—Reno, Nevada Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Nevada Development

Authority (NDA), grantee of FTZ 126, requesting authority to expand its zone in the Reno, Nevada area, within the Reno Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 15, 1996.

FTZ 126 was approved on April 4, 1986 (Board Order 328, 51 FR 12904; 4/16/86). The zone currently consists of the following two sites in Sparks, Nevada, adjacent to the City of Reno: *Site 1:* (15 acres) located on Spice Island Drive near the Reno International Airport; and, *Site 2:* (9 acres, 482,000 sq. ft.) located at 450–475 Lillard Drive.

The applicant is now requesting authority to expand the general-purpose zone to include a site Proposed *Site 3:* (30 acres) consisting of four related but non-contiguous parcels in Reno, Nevada: Parcel A (10 acres)—205 Parr Blvd.; Parcel B (9 acres)—365 Parr Circle; Parcel C (7 acres)—345 Parr Circle; Parcel D (4 acres)—800 Stillwell Road. Each of the four parcels contains a warehouse facility and together they comprise a warehouse complex operated by Bender Warehouse Company. Zone services will be provided by Nevada Foreign Trade Services, Inc., the operator of FTZ 126.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment (original and 3 copies) is invited from interested parties (see FTZ Board address below). The closing date for their receipt is May 31, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 17, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 1755 East Plumb Lane, Room 152, Reno, Nevada 89502

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 21, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–7777 Filed 3–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Lapse of Authority for Inactive Foreign-Trade Zones

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice is given as a reminder to foreign-trade zone grantees and interested parties that Section 400.28(a)(5) (''lapse provision'') of the regulations of the Foreign-Trade Zones (FTZ) Board (15 CFR Part 400), which provides for the lapse of authority for certain inactive foreign-trade zones, goes into effect on November 8, 1996. This information is provided as guidance for affected parties. It outlines how various zones might be affected; the procedure for FTZ activation; and, procedures which are under consideration for implementation of the lapse provision and for a one-year reinstatement period. The notice also provides certain interpretive guidelines and invites comments in writing from interested parties.

EFFECTIVE DATE: The lapse provision first goes into effect for zones approved prior to November 8, 1991, which have not been activated at any time in the past and will not have been activated by November 8, 1996. Thereafter, it will have a continuing effect that requires activation within 5 years of approval.

FTZ ACTIVATION: A zone grantee which will have reported in its annual report to the FTZ Board the receipt of shipments under FTZ procedures (and under Customs activation approval) at any time in the past prior to November 8, 1996, and thereafter within the applicable time frame, is deemed to have fulfilled the activation requirement with regard to its general-purpose zone sites, and for any subzones for which shipments have been reported. The grantees of zones so activated since the last annual report period shall notify the Executive Secretary of this fact with supporting information.

A zone project at which no shipments have been actually received under FTZ procedures, but which is active in offering FTZ services to the public, may fulfill the activation requirement as follows: (1) obtain Customs activation approval under Section 146.6 of the Customs regulations from the Customs Port Director (formerly, District Director) for the area; and, (2) submit a zone schedule to the Executive Secretary of the FTZ Board and to the Customs Port Director pursuant to Section 400.42(b) of the FTZ regulations. The completion of both these requirements will be hereafter referred to as ''FTZ activation''.

While these requirements apply to all zones, zone grantees having no shipments to report and who are completing the requirements to avert a lapse of authority under Section 400.28(a)(5), shall notify the Executive Secretary in writing upon completion of the requirements, stating the extent to which the zone is open for business. The Executive Secretary will then, upon review, acknowledge in writing whether FTZ activation has occurred.

REVIEW PROCEDURE: Beginning November 8, 1996, and thereafter on October 1 of each federal fiscal year, the FTZ Staff will conduct periodic reviews with regard to zone projects that appear to be affected by Section 400.28(a)(5). Based on findings made by the Executive Secretary, a list will be maintained of those zones for which authority has lapsed under Section 400.28(a)(5), and the U.S. Customs Service will be kept advised.

REINSTATEMENT: Consideration will be given by the FTZ Board to the adoption of a reinstatement procedure, which would allow zone grantees to apply for reinstatement of FTZ authority if they fulfill FTZ activation requirements within one year of a lapse of authority. Grantees would notify the Executive Secretary when steps are being taken to qualify for reinstatement. As part of a reinstatement, the FTZ Board may resume processing applications which had been pending with the FTZ Board or the FTZ Staff at the time of a lapse of authority.

INTERPRETIVE GUIDELINES: 1. A zone which had been in FTZ activation at any time and for any length of time within the applicable time frame (i.e., prior to the lapse date) is not affected by the lapse provision.

2. The FTZ activation of any part of a general-purpose zone or a subzone will suffice to preserve FTZ authority for all of the general-purpose sites of a zone project, but each subzone is considered separately.

3. The starting time for tolling whether a lapse of authority has occurred will be from the time of the original grant of authority for a zone project, and it will affect all general-purpose zone sites and subzones associated with the project, however recently approved, as well as applications submitted to or pending with the FTZ Board or the FTZ Staff.

4. The FTZ activation of a general-purpose zone or subzone may be considered to extend to separate, but related, general-purpose zones or subzones approved for the same grantee pursuant to the same Board action, if the Customs Port Director concurs that the

projects and/or sites are considered interrelated from a Customs standpoint.

COMMENTS INVITED: Comments are invited in writing April 29, 1996 from grantees and interested parties as to any of the information, procedures or guidelines outlined in this notice. They should be addressed to: Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: FTZ Staff—Claudia Hausler, (202) 482–2862; U.S. Customs—Marcus Sircus, (202) 927–6894.

Dated: March 25, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–7778 Filed 3–29–96; 8:45 am]

BILLING CODE 3510–25–P

International Trade Administration

Extension of Time Limit for Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of Time Limits for Antidumping Duty Administrative Reviews of Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Korea; Certain Cut-to-Length Carbon Steel Plate from Brazil, Canada, Finland, Germany and Sweden; Certain Cold-Rolled Carbon Steel Flat Products from Korea and the Netherlands; and Certain Grain Oriented Electrical Steel from Italy.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for preliminary and final results of antidumping duty administrative reviews of the antidumping orders on certain corrosion-resistant carbon steel flat products from Canada and Korea; certain cut-to-length carbon steel plate from Brazil, Canada, Finland, Germany and Sweden; certain cold-rolled carbon steel flat products from Korea and the Netherlands; and certain grain oriented electrical steel from Italy, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230, telephone (202) 482–3833 or 482–4037, respectively.

SUPPLEMENTARY INFORMATION: Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant cases, the Department has determined that it is not practicable to complete the review within the statutory time limit. *See* Memorandum from Joseph A. Spetrini to Susan G. Esserman (March 4, 1996).

Since it is not practicable to complete these reviews within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), pursuant to Section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended, the Department is extending the time limits for the aforementioned reviews as follows:

Product	Country	Review period	Initiation date	Prelim due date	Final due date [1]
Corrosion-Resistant Steel (A–122–822)	Canada	8/1/94–7/31/95	9/8/95	9/27/96	4/2/97
Corrosion-Resistant Steel (A–580–816)	Korea	8/1/94–7/31/95	9/8/95	9/27/96	4/2/97
Cut-to-length Plate (A–351–817)	Brazil	8/1/94–7/31/95	9/8/95	9/27/96	4/2/97
Cut-to-length Plate (A–122–823)	Canada	8/1/94–7/31/95	9/8/95	9/27/96	4/2/97
Cut-to-length Plate (A–405–802)	Finland	8/1/94–7/31/95	9/8/95	9/27/96	4/2/97
Cut-to-length Plate (A–428–816)	Germany	8/1/94–7/31/95	9/8/95	9/27/96	4/2/97
Cut-to-length Plate (A–401–805)	Sweden	8/1/94–7/31/95	9/8/95	9/27/96	4/2/97
Cold-Rolled Steel (A–580–815)	Korea	8/1/94–7/31/95	9/8/95	9/27/96	4/2/97
Cold-Rolled Steel (A–421–804)	Netherlands	8/1/94–7/31/95	9/8/95	9/27/96	4/2/97
Grain Oriented Electrical Steel (A–475–811)	Italy	8/1/94–7/31/95	9/15/95	9/27/96	4/2/97

[1] The Department shall issue the final determination 180 days after the publication of the preliminary determination. This final due date is estimated based on publication of the preliminary notice five business days after signature.

Dated: March 22, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–7780 Filed 3–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on February 2, 1996, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice

of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations.

Antidumping Proceeding

A–433–064
Austria
Railway Track Maintenance Equipment
Objection Date: February 29, 1996
Objector: Kershaw Manufacturing Co., Inc.
Contact: Paul Stolz at (202) 482–4474

A–428–807
Germany
Sodium Thiosulfate
Objection Date: February 8, 1996
Objector: Calabrian Corporation
Contact: Lyn Johnson at (202) 482–5287

A–588–816
Japan
Benzyl Paraben
Objection Date: February 29, 1996
Objector: ChemDesign Corporation
Contact: Leon McNeill at (202) 482–4236

A–588–602
Japan
Butt-Weld Pipe Fittings
Objection Date: February 15, 1996; February 20, 1996
Objector: Tube Forgings of America, Inc., Mills Iron Works, Inc., and Hackney, Inc.
Contact: Sheila Forbes at (202) 482–5253

A–588–056
Japan
Melamine
Objection Date: February 14, 1996
Objector: Melamine Chemicals Inc.
Contact: Todd Peterson at (202) 482–4195

A–412–805
The United Kingdom
Sodium Thiosulfate
Objection Date: February 8, 1996
Objector: Calabrian Corporation
Contact: Lyn Johnson at (202) 482–5287.

Dated: March 11, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–7775 Filed 3–29–96; 8:45 am]

BILLING CODE 3510–DS–P

Intent To Revoke Antidumping Duty Orders and Findings and To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Intent To Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of April 1996.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Proceeding

Canada

Sugar and Syrups
A–122–085
45 FR 24126
April 9, 1980
Contact: David Dirstine at (202) 482–4033

Greece

Electrolytic Manganese Dioxide
A–484–801
54 FR 15243
April 17, 1989
Contact: Thomas Barlow at (202) 482–0410

Japan

Calcium Hypochlorite
A–588–401
50 FR 15470
April 18, 1985
Contact: Sheila Forbes at (202) 482–5253

Kenya

Standard Carnations
A–779–602
52 FR 13490
April 23, 1987
Contact: Michael Panfeld at (202) 482–0168

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

Opportunity To Object

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of April 1996. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: March 11, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–7776 Filed 3–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–823]

Professional Electric Cutting Tools from Japan; Extension of Time Limits of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary and final results in the administrative review of the antidumping duty order on professional electric cutting tools (PECTs) from Japan, covering the period July 1, 1994, through June 31, 1995, since it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Heith Rodman or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce has received requests to conduct an administrative review of the antidumping duty order on PECTs from Japan. On August 16, 1995, the Department initiated this administrative review covering the period July 1, 1994, through June 30, 1995.

It is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act (see Memorandum For Sue Esserman from Joe Spetrini, Extension of Time Limits for 1994–95 Antidumping Duty Administrative Review of Professional Electric Cutting Tools from Japan, March 6, 1996). Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to August 27, 1996, and for the final results to December 26, 1996. The Department adjusted the time limits by 28 days due to the government shutdowns, which lasted from November 14, 1995, to November 20, 1995, and from December 15, 1995, to January 6, 1996. *See* Memorandum to the file from Susan G. Esserman, Assistant Secretary for Import Administration, January 11, 1996. These extensions are in accordance with section 751(a)(3)(A) of the Act.

Dated: March 21, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–7779 Filed 3–29–96; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket No. 960322092–6092–01; I.D. 032596B]

RIN 0648–ZA19

Gulf of Mexico Fisheries Disaster Program

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

ACTION: Notice; request for comments.

SUMMARY: Pursuant to the Interjurisdictional Fisheries Act of 1986 (the Act), the Secretary of Commerce declared fisheries disasters in the Gulf of Mexico on August 3, 1995. Emergency aid totaling $15 million is available for these disasters. Up to $5 million of this amount is available for commercial fishermen claiming uninsured fishing gear damage or loss caused by hurricanes, floods, or their aftereffects. In accordance with the Act, this notice requests comments on a proposal to implement the $5 million portion of the emergency aid. Assistance will be in the form of a discretionary grant only; this program does not create an entitlement.

DATES: Submit comments on or before 30 days after April 1, 1996.

ADDRESSES: Comments regarding this proposed program should be sent to Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (telephone number, (301) 713–2396, fax number (301) 589–2686.

Send comments regarding the collection-of-information burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Richard Roberts, NOAA/IRMS, 6010 Executive Blvd. Rm. 722, WSC–5, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Charles L. Cooper, Program Leader, 301–713–2396.

SUPPLEMENTARY INFORMATION: Under the provisions of Public Law 99–659 (16 U.S.C. 4107 *et seq.*) and Public Law 102–396, this program will make Federal assistance available to commercial fishermen whose uninsured fishing gear was lost or damaged because of hurricanes, floods, or their aftereffects occurring in the Gulf of Mexico from August 23, 1992, to December 31, 1995. Awards will be limited to 75 percent of the fishing gear's repair or depreciated replacement cost. All applications must be submitted during a 45-day period beginning 15 days after the date of publication of the final notice in the Federal Register. Applications will be considered on a first-come/first-serve basis.

I. Purpose

This program's purpose is to award grants to commercial fishermen in the Gulf of Mexico for uninsured loss of, or damage to, their fishing gear caused by hurricanes, floods, or their aftereffects occurring from August 23, 1992, through December 31, 1995. CFDA No. 11.452 - Unallied Industry Projects.

II. Definitions

The terms used in this notice have the following meaning:

Application means an application under this program;

Applicant means an applicant under this program;

Award means an approved grant under this program;

Day means a calendar day;

Division means the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910.

Eligible cause means any hurricane, flood, or its aftereffects during a period from August 23, 1992, through December 31, 1995 (including, but not limited to: Wind, waves, rising waters, and the debris or other obstructions caused by them or carried by them);

Eligible waters means all state, Federal, and estuarine waters in the Gulf of Mexico;

Fisherman means any natural or legal person who (1) owns or leases a fishing vessel, (2) derives more than 50 percent of annual income from employing that vessel in fishing, (3) has gross revenues of less than $2 million annually, and (4) is a U.S. citizen or permanent resident alien;

Fishing means catching all types of aquatic animal and plant life (except marine mammals and birds) for the purpose of selling those catches into normal commercial distribution channels with the intent of earning a profit;

Gear means all fishing gear and equipment including, but not limited to,

nets and winches, and fixed gear such as pots, traps, and pound nets;

Ineligible causes means any causes other than eligible causes, including (but not limited to) negligence;

Loss means damage to or loss of any gear caused by eligible causes in eligible waters for which no compensation has been received, or will be received, from insurance companies, state or Federal programs (other than this program), or any other sources; *Loss gear* means the gear for whose loss an applicant is submitting an application under this program;

Loss trip means the trip of the loss vessel during which the loss actually occurred (or, in the case of fixed gear, both the trip in which the loss gear was deployed and the trip in which the loss gear's loss was first discovered);

Loss vessel means the vessel from which the loss gear was, or last had been, deployed at the time of its loss;

Negligence includes, but is not limited to, failure to: (1) Remain outside any navigation safety zone established around any offshore energy activities or other obstructions by any Federal or state authority; (2) avoid obstructions recorded on nautical charts or in the Notice to Mariners in effect at least 15 days before the loss or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve the negligence or fault of the claimant); (3) abide by established Coast Guard navigational rules; or (4) use due care and diligence to avoid or mitigate the damage or loss;

Notice means this Notice of Availability of Federal Assistance;

Program means this program under the notice;

Repair cost means the cost (at the time of loss) of repairing loss gear;

Replacement cost means the cost (at the time of loss) of replacing loss gear;

U.S. citizen means a U.S. citizen for the purpose of documenting vessels in the U.S. coastwise trade. Coastwise trade documentation requires: (1) All sole proprietors to be U.S. citizens, (2) 75 percent of all partners (and 100 percent of all general partners) in a partnership to be U.S. citizens, and (3) 75 percent of all owners of a corporation (as well as its chief executive officer and the minority of its directors necessary to constitute a quorum) to be U.S. citizens; and

Vessel means any fishing vessel, boat, or other water craft documented under the laws of the United States or registered under the laws of any state of the United States and used for fishing or activities directly related to fishing.

III. What is Eligible

The Program is available only to fishermen for the repair cost or replacement cost of gear loss in eligible waters due to eligible causes.

IV. Burden of Proof Required for Claims

Applicants must provide sufficient documentation to prove all circumstances necessary to qualify for assistance (including, but not limited to, documentation evidencing that loss was more likely than not due to eligible causes). Specific types of documentation requested are identified in Section IX below. Other documentation considered to be relevant by applicants may also be submitted. It will be within the Division's discretion to determine whether the documentation will be considered.

V. Amount

Each award shall be for 75 percent of the loss gear's repair or replacement cost, whichever is less, except that (1) no award shall exceed $5,000 and (2) no applicant shall receive aggregate awards from multiple applications totaling more than $15,000.

VI. Who May Apply

Only U.S. citizens or permanent resident aliens who owned or leased loss gear at the time that it was lost may apply. Lessors may not apply unless they bore the risk of the loss gear's loss.

VII. When to Apply

Applications will be accepted during a 45-day period beginning 15 days after the date of publication of the final notice in the Federal Register. Applications received after this period will not be considered.

If applications are sent by U.S. mail, their submission dates are the same as their postmark dates. If applications are sent any other way, their submission dates are the dates the Division receives them. All applications will be considered on a first-come/first-serve basis from the date of acceptance.

VIII. Where to Apply

Applicants must send applications to the Division. All other correspondence or questions about this program or applications under it must be addressed to the Division (see **ADDRESSES**).

IX. Application Contents

Applicants must submit applications on forms provided by the Division. Applicants may receive application forms (and NOAA Federal Assistance application kits) by calling or writing the Division (see **ADDRESSES**). All applications must include at least the following:

(1) The applicant's name, social security number, tax identification number, mailing address, telephone number, citizenship, and whether the applicant owned or leased the loss gear and/or loss vessel during the loss trip;

(2) If the loss vessel is documented under Federal law, a copy of the loss vessel's Certificate of Documentation (U.S. Coast Guard Form 1270);

(3) If the loss vessel is registered under state law, a copy of the registration or title document issued by the registering state;

(4) If the loss vessel is leased, a copy of the lease and the name, mailing address, and telephone number of the loss vessel's lessor (the legal owner from which the applicant leased the loss vessel);

(5) If the loss gear is leased, a copy of the lease and the name, mailing address, and telephone number of the loss gear's lessor (the legal owner from which the applicant leased the loss gear). Loss gear lessees must establish that they bore the risk of the loss gear's loss.

(6) A description of the loss vessel's fishing type, size, and capacity;

(7) A full description of the loss gear and how such gear is normally deployed and operated;

(8) If the loss was observed, the date and time of loss;

(9) If the loss was unobserved, the date and time the applicant last saw the loss gear in good condition and the date and time the applicant first discovered the loss gear's loss;

(10) A full statement of why the applicant believes it is more likely than not that the loss was caused by an eligible cause. The applicant should include in this statement all known evidence relevant to the most likely cause of the loss gear's loss. The level of detail in this statement must, together with all other information required in this section, be sufficient to clearly and accurately depict all known circumstances relevant to the loss. The Division will deem statements that do not meet this criterion to be incomplete. If the time and place of loss are not consistent with the time at which a hurricane or a flood directly affected that place, then the applicant must carefully explain why the applicant believes the loss was more likely to have been caused by the aftereffects of a hurricane or flood rather than to have been caused by other factors (unrelated to hurricanes or floods) normally responsible for such a loss in such a place;

(11) When the loss vessel first left port on the loss trip and when it first returned to port at the end of the loss trip;

(12) Where applicable, the loss vessel's direction, speed, and other activities immediately before, during, and after the loss;

(13) The name, current mailing address, and telephone number of each person serving during the loss trip as a crew member of the loss vessel;

(14) A sworn, written statement from each loss trip crew member describing his or her knowledge of the loss and the conditions surrounding it and his or her activities immediately before, during, and immediately after the time of the loss;

(15) The location where the loss occurred in Loran C coordinates (or, if the loss vessel did not have Loran C capability, the next most accurate method of position fixing available);

(16) The fullest description possible of the nature and type of any obstruction, debris, or other item involved in causing the loss;

(17) The total purchase cost or total lease cost of the loss gear;

(18) A detailed inventory of all components of the loss gear and the nature of the loss with respect to each component;

(19) Proof of the date, place, and cost of having acquired all loss gear (sales receipts, copies of leases, or other satisfactory evidence);

(20) Evidence that the loss vessel was fishing on the three loss-vessel trips before the loss trip. This evidence may consist of trip tickets for the three trips before the loss trip;

(21) Proof of having replaced or repaired the loss gear (sales receipts, repair invoices, copies of leases, or other satisfactory evidence);

(22) A copy of the applicant's Federal income tax return for the year in which the loss occurred (or, if the loss trip occurred in a year for which the applicant has not yet filed a return and the deadline for doing so has not yet passed, then a copy of a return for the latest year for which the filing deadline has passed);

(23) A copy of any state or Federal fishing license, permit, or gear tag receipts, or other state or Federal fishing authorization required for the loss vessel's operation during the loss trip;

(24) Evidence of the applicant's having complied with state or Federal requirements (if any) for reporting the catch results during the loss trip; and

(25) All applications will be submitted, and all statements in them made, under penalty of perjury.

It will be within the Division's discretion to accept other documentation that applicants may submit in support of the application-content requirements. The Division may engage in pre-award negotiations with applicants to enable the Division to make a determination concerning acceptable application-content requirements.

X. Application Processing

(a) *Ineligible or Incomplete Applications.* The Division will not accept ineligible or incomplete applications. The Division will return these to applicants with an explanation of why the applications are unacceptable. Any applicant who wishes to have its returned application reconsidered for acceptance must respond within 30 days from the date of the Division's letter returning the application. If reconsideration responses render the applications complete, they will be accepted as newly submitted applications with the date of response serving as the submission date for chronological ranking for funding purposes.

(b) *Submission Dates for Reconsideration Responses.* If reconsideration responses are sent by U.S. mail, their submission dates are the same as their postmark dates. If these responses are sent any other way, their submission dates are the dates on which the Division receives them.

XI. Determinations

(a) *Chronological Precedence.* Chronological precedence for assistance will be determined by application submission dates. Assistance will be made available on this first-come/first-serve basis until the $5 million available for this program has been depleted.

(b) *Delays.* Determinations will be made as soon as possible, but personnel considerations may result in significant processing delays.

(c) *Division Disapproval.* If the Division disapproves a application, it will return the application to the applicant and state the reason for its disapproval.

(d)*Approval and Disbursement of Funds.* If the Division approves an application, it will forward the application to the NOAA Grants Management Division for final approval. If the NOAA Grants Management Division approves the application, it will issue an award and notify the applicant of the award amount and any further requirements upon which the award is contingent.

(e) *Finality.* All Division and NOAA Grants Management Division determinations will be final and conclusive.

XII. Administrative Requirements

All applicants are subject to so much of the following grants administration requirements as may be applicable to these grants.

Applicants to whom awards will be made must submit a Standard Form 424B, ''Assurances - Non-Construction Programs,'' and Form CD–511 ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.'' These documents are included in the NOAA Federal Assistance Application Kit.

Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension,'' and the related section of the certification form CD–511 applies.

Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR part 26, subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form CD–511 applies.

Any applicant who has paid or will pay for lobbying using any funds must submit an SF-LLL, ''Disclosure of Lobbying Activities,'' as required by law (31 U.S.C. 1352, as amended).

Grant recipients are subject to all Federal laws and Federal and Department policies, regulations, and procedures applicable to Federal financial assistance awards.

Applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt or fine until: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or (c) other arrangements satisfactory to the Department are made.

Applicants are hereby notified that they are encouraged, to the extent

feasible, to purchase American-made equipment and products with funding under this program.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department to cover pre-award costs.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award.

This proposed program has been determined to be not significant for the purposes of E.O. 12866.

Applications under this program are subject to E.O. 12372, ''Intergovernmental Review of Federal Programs.''

This proposed program contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB (OMB control number 0648–0082). Public reporting burden for preparation of the claim application is estimated to be 10 hours per response including the time for reviewing instructions, gathering and maintaining the documentation, and completing and reviewing the collection of information. Other requirements mentioned in the notice include SF 424B and SF LLL and are cleared under OMB Control Numbers 0348–0040 and 0348–0046 respectively.

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.

Authority: Pub. L. 99–659 (16 U.S.C. 4107 *et seq.*); Pub. L. 102–396.

Dated: March 25, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 96–7796 Filed 3–29–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 032296D]

Endangered Species; Permits

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

ACTION: Receipt of applications for a scientific research/enhancement permit (P770#71) and modifications to two scientific research/enhancement permits (P503R and P211E).

SUMMARY: Notice is hereby given that the Coastal Zone and Estuarine Studies Division, NMFS, in Seattle, WA (CZESD) has applied in due form for a permit and the Idaho Department of Fish and Game in Boise, ID (IDFG) and the Oregon Department of Fish and Wildlife in La Grande, OR (ODFW) have applied in due form for modifications to permits to take endangered and threatened species for the purpose of scientific research/enhancement.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before May 1, 1996.

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

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: CZESD requests a permit and IDFG and ODFW request modifications to 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 listed fish and wildlife permits (50 CFR parts 217–227).

CZESD (P770#71) requests a 5-year permit to take adult and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with the continuation of their captive broodstock responsibilities currently authorized under IDFG's scientific research/enhancement permit 795. Under permit 795, CZESD rears and maintains listed fish, originally acquired from IDFG, in their hatchery facilities to dilute the risk of an unanticipated catastrophic event that could cause a decimation of the gene pool if all of the listed fish were at one hatchery location. CZESD requests a separate take authorization for hatchery activities because of the varied nature of NMFS and IDFG ESA-listed sockeye salmon enhancement activities. Listed fish will be reared, maintained, and bred in captivity at any one of three hatchery locations: The University of Washington's Big Beef Creek Research Station near Seabeck, WA; NMFS's Manchester Marine Experimental Station near Manchester, WA; and ODFW's Bonneville Hatchery at Bonneville Dam, OR. CZESD proposes to transfer the resulting progeny of the listed sockeye salmon captive broodstocks to Idaho annually to complement recovery efforts at Redfish Lake.

IDFG (P503R) requests modification 1 to scientific research/enhancement permit 972. Permit 972 authorizes IDFG a take of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a captive broodstock program for three races of threatened chinook salmon in the upper Salmon River Basin. Permit 972, issued on August 7, 1995 (60 FR 42147, August 15, 1995), authorized the collection, handling, and rearing of juvenile, listed, naturally-produced, chinook salmon for the beginning of the captive broodstock program. For modification 1, IDFG requests a transfer of Lemhi River, West Fork Yankee Fork Salmon River, and upper East Fork Salmon River origin juveniles to the NMFS Manchester Marine Experimental Station in WA. IDFG also requests that the NMFS staff at the laboratory, under the direction of Dr. Conrad Mehnken, be authorized to rear and maintain the listed juvenile fish as an agent of IDFG under permit 972. The objective of the transfer is to dilute the risk of an unanticipated catastrophic event that could cause a decimation of the gene pool at one hatchery location by allocating listed juvenile fish to another hatchery location. The transfer of listed juvenile fish is requested for 1996 only. The authorization for NMFS's responsibility to rear and maintain listed juvenile fish as an agent of IDFG under permit 972 is requested for the duration of the permit. Permit 972 expires on September 30, 1998.

ODFW (P211E) requests modification 4 to scientific research/enhancement permit 847. Permit 847 authorizes ODFW a take of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with supplementation programs at the Imnaha River and Lookingglass Creek Hatcheries. The 1996 adult anadromous fish return to the Imnaha River Basin is predicted to be one of the lowest on record. ODFW proposes to retain 50 percent of the adult, ESA-listed, naturally-produced and artificially-propagated salmon that return to the Imnaha River weir for hatchery broodstock with no restriction on the percentage of natural-origin fish to be

used; to release all of the adult, ESA-listed, naturally-produced and artificially-propagated salmon not retained for broodstock above the weir to spawn naturally with no restriction on the percentage of hatchery-origin fish to be released; and to retain two naturally-produced jacks (age three males) and two artificially-propagated jacks for broodstock for every five females retained, up to a maximum fertilization of 10 percent of the 1996 brood eggs. ODFW is currently authorized to retain 30 percent of the returning adult, listed, naturally-produced salmon for broodstock each year. ODFW also proposes to release all of the naturally-produced jacks not retained for broodstock above the weir for natural spawning and to sacrifice all of the surplus hatchery jacks so that they do not dominate the population of males above the weir site. Modification 4 is requested for 1996 only. Permit 847 expires on December 31, 1998.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on any of these applications 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 applicants and do not necessarily reflect the views of NMFS.

Dated: March 25, 1996.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–7794 Filed 3–29–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 032196B]

Endangered Species; Permits

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

ACTION: Issuance of permits 990 (P45U), 991 (P599), and 992 (P600).

SUMMARY: Notice is hereby given that NMFS has issued permits that authorize takes of Endangered Species Act-listed species for the purpose of scientific research/monitoring, subject to certain conditions set forth therein, to the U.S. Fish and Wildlife Service at Red Bluff, CA (FWS), the California Department of Water Resources in Sacramento, CA (CDWR), and California State University at Chico, CA (CSU).

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).

SUPPLEMENTARY INFORMATION: The permits were issued 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 listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on November 27, 1995 (60 FR 58334) that an application had been filed by FWS (P45U) for a permit to take an ESA-listed species. Permit 990 was issued to FWS on March 20, 1996. Permit 990 authorizes FWS to take adult and juvenile, endangered, Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) associated with five scientific research/monitoring 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: (1) A census of juvenile salmonid downstream migration, (2) the radio-tracking of spawning adults, (3) the entrainment of juveniles at the Red Bluff Diversion Dam downstream migrant fish protection facilities, (4) egg incubation temperature tolerance studies, and (5) monitoring adult fish passage to provide adult population estimates. 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 and is included with Study 1. Permit 990 will expire on June 30, 2001. Notice was published on November 15, 1995 (60 FR 57402) that an application had been filed by CDWR (P599) for a permit to take an ESA-listed species. Permit 991 was issued to CDWR on March 20, 1996. Permit 991 authorizes CDWR to take juvenile, endangered, Sacramento River winter-run chinook salmon associated with a scientific research project. The research goal is to develop a technique to distinguish between California's Central Valley chinook races in a mixed-stock population, particularly winter-run, based on an analysis of the nuclear DNA material from fin tissue samples. Permit 991 will expire on June 30, 1999.

Notice was published on November 15, 1995 (60 FR 57402) that an application had been filed by CSU (P600) for a permit to take an ESA-listed species. Permit 992 was issued to CSU on March 20, 1996. Permit 992 authorizes CSU to take juvenile, endangered, Sacramento River winter-run chinook salmon associated with a scientific research/monitoring project. The project is designed to assess the use of the non-natal rearing habitat in the Central Valley by juvenile chinook salmon, specifically the small, intermittent tributaries. The knowledge gained may be important to protecting listed fish populations since many of the smaller tributaries are being degraded. Permit 992 will expire on June 30, 1999.

Issuance of the permits, as required by the ESA, was based on a finding that such actions: (1) Were requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that is the subject of the permits, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing listed species permits.

Dated: March 22, 1996.

Russell J. Bellmer,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–7795 Filed 3–29–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 29, 1996.

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 January 19, 26 and February 9, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 1362, 2494 and 4962) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the military resale commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the military resale commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the military resale commodities and services.

3. The action will result in authorizing small entities to furnish the military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the military resale commodities and services proposed for addition to the Procurement List.

Accordingly, the following military resale commodities and services are hereby added to the Procurement List:

Military Resale Commodities

Cup, Drinking, Styrofoam
M.R. 537
M.R. 539

Services

Laundry Service, Fort Sam Houston/Fort Hood, Texas
Recycling Service, Basewide, Laughlin Air Force Base, Texas
Switchboard Operation, Department of Veterans Affairs Medical Center, Denver, Colorado
Toner Cartridge Remanufacturing, Fleet and Industrial Supply Center, Puget Sound, Bremerton, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 96–7797 Filed 3–29–96; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title: West Point Graduates Study—1996.

Type of Request: New collection.

Number of respondents: 1,826.

Responses Per Respondent: 1.

Annual Responses: 1,826.

Average Burden Per Response: 35 minutes.

Annual Burden Hours: 1,059.

Needs and Uses: The perceptions of graduates of the U.S. Military Academy on the effectiveness of Academy programs and curricula are needed for periodic accreditation by the Accreditation Board of Engineering and Technology (ABET). ABET considers this graduate feedback process essential to the accreditation program. The information collected hereby, will be used to evaluate programs and curricula, and to formulate changes deemed available.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 27, 1996.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–7835 Filed 3–29–96; 8:45 am]
BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 2 & 3 April 1996.

Time of Meeting: 0800–1800 (both days).

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board's (ASB) 1996 Summer Study of ''Unmanned Aerial Vehicles (UAVs)'' will meet for briefings and discussions on the study subject. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically paragraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,
Acting Administrative Officer, Army Science Board.

[FR Doc. 96–7974 Filed 3–29–96; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Oliver Delivery Project

AGENCY: Bonneville Power Administration (BPA), U.S. Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS), and notice of floodplain and wetland involvement.

SUMMARY: To meet the obligation of the Columbia River Treaty (Treaty) between Canada and the United States of America (U.S.), BPA on behalf of the U.S. Entity proposes to construct a single-circuit 500-kilovolt (kV) transmission line from either the Grand Coulee Switchyard or Chief Joseph Substation to a point on the U.S.-Canada border near Oliver, British Columbia (B.C.). According to the Treaty and subsequent agreements, all power to which Canada is entitled under the Treaty is due to be delivered by April 1, 2003.

Potential Federal cooperating agencies with expertise and/or jurisdiction within the north central Washington study area include the U.S. Department of Interior—Bureau of Indian Affairs (BIA), Bureau of Reclamation (BOR), Bureau of Land Management (BLM), and National Park Service (NPS); U.S. Department of Agriculture—Forest Service, Okanogan National Forest (ONF); and the Department of Defense—U.S. Army Corps of Engineers (COE).

BPA and those Federal agencies wishing to participate as cooperating agencies will prepare an EIS on this action to fulfill National Environmental Policy Act (NEPA) requirements. As the lead agency, BPA will consult with the Colville Confederated Tribes, the State of Washington, Okanogan County, Douglas County, other local governments, interested individuals and groups, and affected landowners to identify feasible routing alternatives and to analyze and select a suitable route. The State of Washington Energy Facility Site Evaluation Council will review the EIS to assure that the analysis contains sufficient information to determine consistency with pertinent state and local environmental standards and guidelines.

To ensure that the full range of issues, concerns, and opportunities relating to this proposal are addressed, BPA is establishing a 4-month public scoping period to identify suitable transmission line routes and to define the environmental issues and studies that will be addressed in the EIS. BPA has not identified specific proposed or alternative routes at this time. Public workshops will be held in early spring of 1996 to gather information needed for locating suitable transmission line routes through the Okanogan County and Douglas County, Washington, study area. Interested and affected citizens, interest groups, local governments, and civic organizations are encouraged to participate in identifying alternatives and issues to be evaluated in the EIS. People are particularly encouraged to identify areas that may or may not be suitable for transmission line development; sensitive resources that the EIS preparers may be unaware of; and any other issues that will assist in identifying and evaluating viable transmission line routes. Once alternative routes for the proposed transmission line have been identified, a second series of public workshops will be held, possibly in early to mid-summer. These meetings will focus on more detailed issues, including the scope of environmental studies and site-specific issues and concerns that should be addressed in the EIS.

DATES: Because planning and consultation with other Federal agencies, Okanogan County, Douglas County, and Colville Tribal officials has only recently been initiated, the number, location, and dates of public involvement activities including meetings or workshops has not been determined. All future public meeting times and locations, however, will be publicized by advertisements, by news releases in local media, and by written notice to all known interested parties. All comments, whether oral or written, will be given equal consideration. Comment deadlines will be announced during initial meetings and through project fact sheets.

ADDRESSES: To receive a copy of any current or future project documents, such as the System Operation Review (SOR) EIS, Canadian Entitlement EIS, the Oliver Delivery Project scoping report, or the draft EIS, when they become available, call toll free 1–800–622–4520, or 230–3478 (Portland). To have your name placed on the mailing list for this project, call 1–800–622–4519; to submit comment letters, write to the Public Involvement Manager, Bonneville Power Administration—CKP, P.O. Box 12999, Portland, OR 97212. Comments may also be sent to the BPA Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION, CONTACT: Mike Johns, Project Manager, at 1–800–662–6963; or write him at Bonneville Power Administration—TE, P.O. Box 3621, Portland, OR 97208–3621.

SUPPLEMENTARY INFORMATION: On January 17, 1961, the United States signed a Treaty with Canada (which was ratified in 1964) regarding international cooperation in the water resource development of the Columbia River Basin. The Treaty provided for Canada to construct three storage dams on the Columbia River in Canada, and gave the United States the option of constructing Libby Dam in Montana (which backs up into Canada). The dams help control floods in both countries and enable dams downstream in the United States to produce additional power, defined as the ''downstream power benefits,'' which Canada and the United States share equally under the Treaty. Canada sold its half of the downstream power benefits (the ''Canadian Entitlement'') to a consortium of U.S. utilities for a 30-year period. The 30-year sales will begin to expire in 1998. In 1992, an Interim Agreement was signed that provides for the Canadian Entitlement to be delivered to Canada over existing facilities during the period from April 1, 1998, to March 31, 2003. After this interim agreement expires, the Treaty requires that the Entitlement shall be delivered ''to Canada at a point on the Canada-United States of America boundary near Oliver, British Columbia, or at such other place as the entities may agree upon'' (Article V(2)).

The U.S. Entity's Delivery of the Canadian Entitlement Final EIS (January 1996) analyzed the effects in Canada and the United States of various options to deliver the Canadian Entitlement to British Columbia. After several years of negotiations, the U.S. and Canadian Entities were unable to mutually agree on an alternative to the Treaty-specified delivery at Oliver. Because no agreement was reached, BPA must begin the environmental and engineering studies necessary to meet the U.S. Treaty obligation to deliver the full Entitlement (between 1200 to 1500 megawatts (MW) of capacity and 550 to 600 average megawatts (aMW of energy) by April 1, 2003. The purpose of the proposed transmission line is to:

- Fulfill the U.S. obligation under the Treaty;
- Limit the adverse environmental effects of locating, operating, and maintaining a new single-circuit 500-kV line; and
- Minimize the costs for construction, operation, and maintenance of a new single-circuit 500-kV line.

Proposed Action. BPA proposes to construct a single-circuit 500-kV transmission line from Grand Coulee Switchyard or Chief Joseph Substation in north central Washington to the U.S.-Canada border near Oliver, B.C. The project would consist of:

- 135 to 155 kilometers (85 to 95 miles) of transmission line;
- New and expanded right-of-way up to 38 to 49 meters (125 to 160 feet) wide;
- New and upgraded access roads at a ratio of one to two kilometers of roads for each kilometer of line (one to two miles of roads for each mile of line); and
- Improvement or expansion of existing substations.

Upon completion, the line would be capable of carrying between 1200 to 1500 MW of capacity and 550 to 600 aMW of energy as required to meet the U.S. obligation of delivering the full Entitlement to Canada. Any construction north of the border would be the responsibility of the Canadian Entity.

Related Actions. Two other decision making processes in which BPA is engaged are related to Oliver Delivery decisions: the SOR and the BPA Business Plan.

The SOR Final EIS (November 1995) evaluated the environmental impacts of a variety of river operations and

constraints for all uses of the system including Treaty obligations. The SOR process also considered new allocation agreements that specify how the Canadian Entitlement costs will be allocated to each of the 11 Federal and non-Federal projects of Treaty storage following expiration of existing agreements.

BPA's Business Plan (September 1995) defined the basic business direction BPA intends to pursue as it responds to the challenges of the dynamic electric utility industry. The Business Plan Final EIS (June 1995) provides the information on current electric utility market conditions, loads, resources, and costs used for development, evaluation, and potential amendment of alternatives for the Delivery of the Canadian Entitlement Final EIS (January 1996).

Alternatives. Alternatives other than the physical return of the downstream benefits at the Canadian border near Oliver, B.C., will not be addressed in the site-specific Oliver Delivery Project EIS because they were previously analyzed in the U.S. Entity's Delivery of The Canadian Entitlement Final EIS (January 1996). The alternative to the proposed action identified for possible evaluation in the Oliver Delivery Project EIS includes the No-Action Alternative (not to build a 500-kV transmission line). As various transmission line routing options between either Grand Coulee Switchyard or Chief Joseph Substation to the U.S.-Canada border near Oliver, B.C., are developed, one route will become the agency's preferred alternative. Because the Oliver Delivery Project EIS is tiered directly to the Delivery of the Canadian Entitlement Final EIS and Record of Decision (March 1996), any future negotiated alternatives to delivery at Oliver would necessarily require the U.S. Entity to revisit the programmatic EIS to determine whether it adequately covers the environmental inputs of that alternative, or whether a supplement to the programmatic EIS needs to be prepared. Copies of any of the above-referenced documents may be obtained by calling BPA's toll-free document request line at 1–800–622–4520.

Identification of Environmental Issues. Significant issues presently identified relating to this proposal include: (1) potential impacts to land uses, including agricultural lands, residential areas, and recreational resources; (2) potential impacts to endangered species, wildlife, and vegetation; (3) visual impacts from the addition of a new 500-kV transmission line to the landscape; (4) potential impacts to soils (erosion), aquatic habitats, wetlands, and floodplains; (5) potential impacts on cultural resources and Native American sacred sites; (6) socioeconomic effects including property value impacts arising from the construction of the new line; (7) potential public concern with health and safety effects associated with electric and magnetic fields, fire, or hazardous materials; (8) concerns with requirements for new road and transmission line rights-of-way and potential acquisition of land for associated facilities; and (9) consistency with Tribal reserved rights, and Tribal, State, and local environmental and land-use plans, policies, and regulations. These issues, together with any additional significant issues identified through the public scoping process, will be examined in detail and documented in the EIS.

Issued in Portland, Oregon, on March 25, 1996.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 96–7858 Filed 3–29–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MT96–10–000]

Crossroads Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 26, 1996.

Take notice that on March 20, 1996, Crossroads Pipeline Company (Crossroads) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheets 1, 80, 86 and 87, proposed to become effective on April 22, 1996.

Crossroads states that these tariff sheets were revised to update information regarding operating personnel and to correct a typographical error.

Crossorads also states that copies of this filing were served upon its jurisdictional customers and the relevant regulatory commissions. Crossroads requests an effective date of April 22, 1996.

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 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such motions to intervene and protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–7803 Filed 3–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–21–000]

IES Utilities Inc.; Notice of Application

March 26, 1996.

Take notice that on March 20, 1996, IES Utilities Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue and sell for cash up to $250 total principal amount of long-term indebtedness in the form of Notes, Bonds or Subordinated Debentures over a two-year period, beginning April 19, 1996, with final maturities not later than 30 years from the date of issue.

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, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 17, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7805 Filed 3–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–19–000]

Rochester Gas and Electric Corporation; Notice of Application

March 26, 1996.

Take notice that on March 15, 1996, Rochester Gas and Electric Corporation filed an application under § 204 of the

Federal Power Act seeking authorization to issue securities pursuant to:

(i) A $30 million Credit Agreement entered into with The Chase Manhattan Bank, N.A. (Bank) (the ''636 Notes'');

(ii) A $20 million Promissory Note with the Bank backed by a Security and Loan Agreement (Secured Note); and

(iii) The aggregate of $92 million of Promissory Notes under lines of credit with Chemical Bank Corporation ($30 million), Marine Midland Bank, N.A. ($15 million), Mellon Bank, N.A. ($25 million, Citibank, N.A.) ($20 million), and First National Bank of Rochester ($2 million);

during the period from June 1, 1996 through May 31, 1998, and which will have maturity dates of one year or less from the date of issuance.

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, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 15, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to make 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. 96–7804 Filed 3–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–180–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 26, 1996.

Take notice that on March 21, 1996, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 133 and 134 to become effective April 1, 1996.

Stingray states that the purpose of the filing is to revise its cashout procedures to remove any economic incentive shippers may have to overdeliver or underdeliver gas to Stingray.

Stingray requests whatever waivers may be necessary to permit the tariff sheets as submitted to become effective April 1, 1996.

Stingray states that copies of the filing are being mailed to Stingray's jurisdictional customers and interested state regulatory agencies.

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, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–7802 Filed 3–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–10–29–001]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

March 26, 1996.

Take notice that on March 21, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) Substitute Fifth Revised Sheet No. 29 to its FERC Gas Tariff, Third Revised Volume No. 1, and Ninth Revised Sheet No. 1300B to its FERC Gas Tariff, Original Volume No. 2. Such tariff sheets are proposed to be effective April 1, 1996.

Transco states that the purpose of the instant filing is to supplement Transco's March 1, 1996 Fuel Tracker Filing in Docket No. TM96–10–29–000 in order to (1) correct an error in the calculation of the revised fuel retention percentage under Rate Schedule WSS, and (2) correct the pagination of Sheet No. 1300B. It has come to Transco's attention that the Rate Schedule WSS fuel retention percentage set forth on Fifth Revised Sheet No. 29 was incorrect due to an inadvertent mathematical error. Also, Transco incorrectly paginated Sheet No. 1300B as ''Eighth Revised'', which sheet was previously rejected as moot in the Commission's December 4, 1995 order in Docket No. RP95–197–004.

Therefore, in order to correct these errors, Transco states that it is submitting in the instant filing Substitute Fifth Revised Sheet No. 29 which reflects the correct Rate Schedule WSS fuel retention percentage, and Ninth Revised Sheet No. 1300B in order to reflect the appropriate pagination designation for Sheet No. 1300B.

Transco states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties to Docket No. TM96–10–29–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7800 Filed 3–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–181–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 26, 1996.

Take notice that on March 21, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, proposed to be effective April 20, 1996.

Trunkline states that the propose of this filing is to provide Trunkline's firm shippers under Rate Schedules FT, EFT and QNT with a customized reservation rate that will allow them maximum flexibility in dealing with market conditions throughout the contract year. The Customized Reservation Pattern (CRP) election will allow a firm shipper to shift, during each twelve month period commencing November 1, up to 80% of the reservation charge obligation for the April to October period into the preceding November to March period. By permitting a shipper to customize its cost-based reservation charges, CRP will raise or lower the maximum monthly charge to better reflect conditions in its own markets and to the secondary market for capacity release. This will further the Commission's goals of allocating capacity to those shippers who value it most and permit shippers

to contract for services at rates which are designed to market gas and services competitively.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

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 NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96–7801 Filed 3–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1325–000, et al.]

Montaup Electric Company, et al. Electric Rate and Corporate Regulation Filings

March 25, 1996.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Company

[Docket No. ER96–1325–000]

Take notice that on March 15, 1996, Montaup Electric Company (Montaup), filed a Notice of Cancellation of a service agreement between Montaup and Massachusetts Municipal Wholesale Electric Company, Montaup Rate Schedule No. 79. Montaup requests that the Notice be allowed to become effective February 23, 1996.

Comment date: April 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. ER96–1326–000]

Take notice that on March 15, 1996, Louisville Gas and Electric Company tendered for filing copies of service agreement between Louisville Gas and Electric Company and Entergy Services, Inc. under Rate GSS.

Comment date: April 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Electric & Gas Company

[Docket No. ER96–1328–000]

Take notice that on March 15, 1996, South Carolina Electric & Gas Company, tendered for filing proposed Contract for Purchases and Sales of Power and Energy between South Carolina Electric & Gas Company and Electric Clearinghouse, Inc. (ECI).

Under the proposed contract, the parties will purchase and sell electric energy and power between themselves. South Carolina Electric and Gas Company also requested waiver of notice in order that the contract be effective on March 7, 1996.

Copies of this filing were served upon Electric Clearinghouse, Inc.

Comment date: April 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Company

[Docket No. ER96–1330–000]

Take notice that on March 15, 1996, Southern California Edison Company (Edison), tendered for filing the following amendments to the Supplemental Agreements to the 1990 Integrated Operations Agreement with the City of Colton (Colton), FERC Rate Schedule No. 249:

Amendment No. 1 To The Edison-Colton Supplemental Agreement for the Integration of Non-Firm Energy Purchased Under The Conformed Western Systems Power Pool Agreement

Amendment No. 1 To the Supplemental Agreement Between Southern California Edison Company and the City Of Colton for the Integration of Replacement Capacity Purchased Under the WSPP Agreement

The amendments reflect Colton's membership in the Western Systems Power Pool (WSPP) and permit the integration of non-firm energy and replacement capacity purchased by Colton under its own authority from WSPP.

Edison requests waiver of the Commission's 60-day notice requirements and an effective date of March 16, 1996, the day after filing.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Power and Light Company

[Docket No. ER96–1331–000]

Take notice that on March 18, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Cinergy Corporation. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of March 1, 1996.

Comment date: April 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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 the comment date. 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. 96–7877 Filed 3–29–96; 8:45 am]

BILLING CODE 6717–01–P

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: March 22, 1996, 61 FR 11830.

PREVIOUSLY ANNOUNCEMENT TIME AND DATE OF MEETING: March 27, 1996, 10 a.m.

CHANGE IN THE MEETING: The following Docket Nos. have been added on the Agenda scheduled for March 27, 1996.

Item No., Docket No. and Company

CAG–33—TM95–2–21–003 and TM95–3–21–002, Columbia Gas Transmission Corporation.

Lois D. Cashell,

Secretary.

[FR Doc. 96–7976 Filed 3–28–96; 2:27 pm]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5450–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request Number 801: Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest system, ICR No. 801, OMB No. 2050–0039, expires 9/30/96.

Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 31, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–96–HMIP-FFFFF to RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA HQ), 401 M Street, SW., Washington, D.C. 20460. Comments may also be submitted electronically through the Internet to: RCRA—Docket @epamail.epa.gov. Comments must be submitted as a ASCII file avoiding the use of special characters and any form of encryption.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway 1, 1235 Jefferson Davis Highway, first floor, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page.

Copies of the original ICR may be requested from the docket address and phone number listed above or may be found on the Internet. On the Internet, access the main EPA gopher menu and locate the directory: EPA Offices and Regions/Office of Solid Waste and Emergency Response(OSWER)/Office of Solid Waste(RCRA)/hazardous waste—RCRA Subtitle C/generators.

Follow these instructions to access the information electronically: Gopher: gopher.epa.gov WWW:Http://www.epa.gov.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323. For technical information, contact Ann Codrington at 202–260–4777 or Richard LaShier at 202–260–4669.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those who generate, transport, or manage hazardous waste including those who store, treat, recycle, or dispose of hazardous waste.

Title: Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System, ICR No. 801, OMB No. 2050–0039, expiration date: 9/30/96.

Abstract: The Resource Conservation and Recovery Act (RCRA), as amended, establishes a national program to assure that hazardous waste management practices are conducted in a manner that is protective of human health and the environment.

EPA's authority to require compliance with the manifest system stems primarily from RCRA § 3002(a)(5). This section mandates a hazardous waste manifest ''system'' to assure that all hazardous waste generated is designated for and arrives at the appropriate treatment, storage, disposal facility. An essential part of this manifest system is the Uniform Hazardous Waste Manifest (Form 8700–22A). The manifest is a tracking document that accompanies the waste from its generation site to its final disposition. The manifest lists the wastes that are being shipped and the final destination of the waste.

The manifest system is a self-enforcing mechanism that requires generators, transporters, and owner/operators of treatment, storage, and disposal facilities to participate in hazardous waste tracking. In addition the manifest provides information to transporters and waste management facility workers on the hazardous nature of the waste, identifies wastes so that they can be managed appropriately in the event of an accident, spill, or leak, and ensures that shipments of hazardous waste are managed properly and delivered to their designated facilities.

This system does not ordinarily involve intervention on the part of EPA unless hazardous wastes do not reach their point of disposition within a specified time frame. In most cases, RCRA-authorized States operate the manifest system, and requirements may vary among authorized States.

EPA believes manifest requirements and the resulting information collection mitigate potential hazards to human health and the environment that may result when waste is intentionally or unintentionally spilled en-route to a destination facility.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement

The projected burden and cost for complying with manifest requirements are approximately 2,822,873 burden hours per year with an annual cost of $96,861,043.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Recordkeeping and Reporting Burden

Hazardous Waste Generators

The total estimated annual recordkeeping and reporting burden for hazardous waste generators is 1,531,135 hours.

The Agency estimates that there are 21,575 large quantity generators (LQGs), 190,431 small quantity generators (SQGs), and 2,389 treatment storage and disposal facilities (TSDFs) acting as generators who are subject to the federal requirements for preparing a manifest. Hazardous waste generators prepare approximately 2,620,644 manifests annually for federally regulated hazardous waste.

The Agency believes that LQGs and SQGs take an average of 24 and 22.8 minutes respectively, to complete each manifest, and they are estimated to take 1.25 hours to read the manifest regulations once a year.

The estimated annual reporting burden related to manifesting for a SQG or LQG ranges from three to 100 minutes per generator. The variation in burden hours will depend on the nature of the shipment. For example if a hazardous waste generator receives assistance in completing the manifest and experiences no problems with the shipment, the burden is likely to be as low as three minutes per manifest. If however, a generator does not receive a copy of the manifest returned by the TSDF the burden can be as high as 100 minutes to account for the time required to complete and submit an exception report.

EPA also estimates that there are 2,389 TSDFs who ship wastes offsite and that a TSDF who ships wastes offsite takes an average of 25.8 minutes to prepare a manifest. Of these TSDFs approximately 75 percent are captive TSDFs (i.e., TSDFs who receive waste from onsite sources only, or from onsite and offsite sources that are owned by the same company) and 25 percent are commercial TSDFs (i.e., facilities that manage waste from any generator or facility, or from a limited group of generators or facilities for commercial purposes). EPA estimates that the average commercial TSDF acting as a generator completes 260 manifests annually while the average captive TSDF acting as a generator completes 32 manifests annually. Approximately 155,285 manifests are completed annually by all commercial TSDFs acting as generators, and 57,336 manifests are completed annually by all captive TSDFs acting as generators. This results in a total of 212,621 manifests generated by TSDFs acting as generators each year.

In addition to reporting burden, hazardous waste generators are expected to incur a recordkeeping burden of between 10 and 20 minutes for time spent retaining the manifest, obtaining the signature of the first transporter and any dealing with exception reports onsite.

Hazardous Waste Transporters

The estimated annual recordkeeping and reporting burden for hazardous waste transporters who handle the manifest is 429,058 hours. The Agency estimates that there are 500 hazardous waste transporter companies subject to the manifest system and that on average, each company will take 1.25 hours to read the manifest regulations once a year. Approximately 91 percent (2,384,786) of manifests will accompany highway shipments, 6 percent (157,238) will accompany rail shipments, and 3 percent (78,619) will accompany water shipments. EPA estimates that there are approximately 2,620,644 manifests completed annually and that there are an additional 2,621 manifests that accompany exports of hazardous wastes from the U.S.

The estimated annual reporting burden per manifest for hazardous waste transporters ranges from three to 90 minutes. The variation in burden hours for transporters will depend on the nature of the shipment and whether a discharge has occurred. If a discharge of hazardous waste occurs, the transporter is required to notify the authorities and will incur a higher burden.

In addition to reporting burden, hazardous waste transporters are expected to incur a recordkeeping burden of between five and 15 minutes per manifest to account for time spent retaining the manifest onsite, obtaining the signature of the next handler of the shipment, and relaying to that handler the remaining copies of the manifest.

Treatment Storage and Disposal Facilities

The estimated annual recordkeeping and reporting burden for designated TSDFs is 862,680 hours. Of the 2,584 TSDFs in the U.S., approximately 739 TSDFs receive hazardous waste shipments from offsite (e.g., they receive waste from any generator or facility, or from a limited group of generators or facilities for commercial purposes). The remaining TSDFs treat or store wastes from onsite sources only. EPA estimates that TSDFs who receive waste for treatment, storage, and disposal will take 1.25 hours to read the manifest regulations once a year.

These designated facilities are also expected to spend between 10 and 250 minutes fulfilling reporting requirements. For most TSDFs, reporting consists of completing and transmitting the manifest. Reporting of this type may require only 10 minutes per manifest. The Agency estimates that of the 2,620,274 manifests received by TSDFs, 10,481 (0.4%) manifests involve discrepancies. A TSDF who encounters a significant discrepancy may incur a burden as high as 250 minutes per manifest. This includes time for contacting the generator and completing the discrepancy reports.

In addition to reporting burden, designated TSDFs are expected to incur a recordkeeping burden of between five and 35 minutes per manifest to account for time spent retaining the manifest onsite and if needed, a discrepancy and unmanifested waste report, and relaying a signed copy confirming delivery of the shipment to the generator.

Costs

EPA estimates that generators, transporters, and TSDFs incur annual costs of $96,861,043. Of this total, $96,803,642 (99.9%) is attributable to labor costs and to operation and maintenance costs. Labor costs are estimated to be $96.16 per hour for legal staff, $71.50 per hour for managerial staff, $46.80 per hour for technical staff, and $24.48 per hour for clerical staff.

Additionally, capital costs for the hazardous waste manifest requirements are approximately $57,261. For this ICR, capital cost represents the cost of purchasing file cabinets to store paper copies of the manifest. The Agency anticipates that collectively the hazardous waste industry will need to keep copies of 7,872,069 manifests and reports annually and would need to purchase 492 standard size lateral file cabinets each year. In total, EPA estimates that the hazardous waste industry will need to pay an annual cost of $28,630 for the 492 file cabinets over each of the 15 years of the useful life of the file cabinet.

Because the exhibits in the ICR summarized in this notice presents the average annual cost to respondents under the manifest system over the three-year life of the ICR, EPA has averaged the annual cost of purchasing file cabinets over three years. By averaging the annual payments for each of the three years, EPA has determined

the total average annual cost to the industry to be approximately $57,261.

Commenters should note that the above estimates reflect an overall increase in burden from the previous ICR. This increase is due primarily to adjustments to the number of manifests per shipment, to the amount of time required to read the regulations, and to the amount of time needed to prepare the manifest and process it during its transmission between various handlers.

The Agency is specifically interested in comments concerning the accuracy of the number of manifests estimated, the amount of time required to read the regulations and prepare the manifest, and elements of the manifest system that result in additional burden but are not included in the ICR.

Commenters should also be advised that EPA plans a more fundamental modification of the manifest system during the period of this ICR renewal. The Agency is interested in reducing the data elements and copy requirements of the current form, and moving perhaps to a more automated means of tracking and reporting hazardous waste movement data. Therefore, EPA also solicits comments suggesting those elements of the manifest system that are most amenable to change, and the burden reduction or other benefits that could result from the suggested changes. EPA also requests comments on the concept of automating the manifest system, and suggestions and concerns from the public on the automated approaches which EPA should consider in developing a new approach to tracking hazardous waste shipments.

Send comments regarding the ICR and suggestions for reducing the burden to the address noted above in the section entitled **ADDRESSES.**

Dated: March 25, 1996.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 96–7875 Filed 3–29–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Emergency Review and Approval

March 22, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 5, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: New Collection.

Title: Petition and Waiver Procedures Adopted in Preemption of Local Zoning Regulations of Satellite Earth Stations, R&O and Further NPRM IB Docket 95–59.

Form No.: N/A.

Type of Review: Emergency Submission.

Respondents: Business or other-for-profit; individuals or households; Not-for-profit institutions; Farms; and State, Local or Tribal Government.

Number of Respondents: 40.

Estimated Time Per Response: 3 hours to prepare petitions for Declartory Rulings and 5 hours per respondent to prepare Petitions for Waivers.

Total Annual Burden: 112 hours.

Total Annualized Cost per respondent: 4,500 per respondent for filing for Declartory Rulings and 1,500 per respondent for filing a Petition for Waiver. These are the estimated costs if the respondents hire an attorney to compile the information.

Needs and Uses: Pursuant to Section 205.104(d) of the Commission Rules, the Commission will be issuing a public notice implementing revisions to its rule preempting certain local nonfederal governmental regulations of satellite earth station antennas and setting forth procedures for filing petitions and waivers. The information collected from persons or entities seeking a petition for declaration of preemptibility will be used by the Commission to determine whether the state or local regulation in question is preemptible under Section 205.104 of the Commissions rules. The information collected from states and other local governmental agencies seeking a waiver of Section 25.104 will be used to determine if a waiver of the rule is warrented.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–7811 Filed 3–29–96; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections Submitted to OMB for Review and Approval

March 27, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 1, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain___t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0134.

Title: Application for Renewal of Private Radio Station License.

Form No.: 574R.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit; small businesses or organizations; individuals or households; state or local governments; not-for-profit institutions.

Number of Responses: 84,000.

Estimated Time Per Response: .33 hours.

Total Annual Burden: 27,720 hours.

Needs and Uses: FCC rules require that radio station licensees renew their radio station authorization every five years. Data is used to update the existing database and make efficient use of the frequency spectrum. Data is also used by compliance personnel in conjunction with field engineers for enforcement and interference resolutions. The data collected is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules 47 CFR Parts 1.922, 90.119, 90.135, 90.157, 95.89, 95.103 and 95.107. The Commission is revising the form to include a cerficiation block for the National Environmental Protection Act (NEPA).

OMB Approval Number: 3060–0536.

Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.

Form No.: FCC Form 431.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 5000.

Estimated Time Per Response: 3 hours per respondent and 500 hours burden is imposed on the TRS Administrator.

Total Annual Burden: 15,593.

Needs and Uses: The Americans with Disabilities Act of 1990 requires the Commission to ensure that telecommunications relay services are available, to the extent possible, to individuals with hearing and speech disabilities in the United States. To fulfill this mandate, the Commission adopted rules which require the provision of TRS services, set minimum standards for TRS providers and establish a shared-funding mechanism for recovering the costs of providing interstate TRS. See 47 CFR Sections 64.601–64.605. FCC Form 431 is used in implementing the shared-funding program for the recovery of interstate telecommunications relay services (TRS) costs. All common carriers must contribute to the TRS Fund and complete FCC 431 form. The information is used to administer the program. This collection is being revised to include the burden for the disclosure require contained in Section 64.604(G). An adjustment was also made to correct the actual number of TRS providers subject to requirements contained in Sections 64.604(c)(4)(iii)(C), 64.604(c)(4)(iii)(E) and 64.604(G). In previous submission we inadvertantly identified these collections as being imposed on 5,000 respondents. However, only approximately 13 entities are actually subject to them. Therefore the total burden estimate has been reduced.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–7963 Filed 3–29–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency information collection activities: Proposed collection; comment request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

BACKGROUND:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1995, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the OMB 83-I and supporting statement and the approved collection of information instruments will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

(a) whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

(b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 31, 1996.

ADDRESSES: Comments, which should refer to the OMB control number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as

provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Milo Sunderhauf, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions, the Paperwork Reduction Act Submissions (OMB 83-I), supporting statements, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. Report title: Weekly Report of Assets and Liabilities for Large Banks and Weekly Report of Selected Assets
Agency form number: FR 2416 and FR 2644
OMB control number: 7100-0075
Frequency: Weekly
Reporters: U.S. commercial banks

Annual reporting hours: As the proposal calls for reductions in both the number of items and the number of respondents, the burden that the Federal Reserve imposes on the public by collecting the FR 2416 will be less than the current burden. Since the number of items collected on the FR 2644 is increasing while the authorized panel size remains constant, the burden imposed by the collection of this report will increase. Estimates of the burdens of the revised reports will be prepared in consultation with respondents.

Estimated average hours per response: The Federal Reserve requests estimates from respondents.
Number of respondents: 139 on the FR 2416 and 1,100 on the less detailed FR 2644
Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. §§ 225(a) and 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: These two voluntary reports are mainstays of the reporting system from which data for analysis of current banking developments are derived. The FR 2416 is used on a stand-alone basis as the ''large domestic bank series.'' Both reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole. These estimates also are used in constructing the bank credit component of the domestic non-financial debt aggregate monitored by the Federal Open Market Committee (FOMC).

The Federal Reserve publishes the data in aggregate form in two statistical releases that are followed closely by other government agencies, the banking industry, the financial press, and other users. These are the weekly statistical releases *Assets and Liabilities of Commercial Banks in the United States* (H.8) which provides a balance sheet for the banking industry as a whole and *Weekly Consolidated Condition Report of Large Commercial Banks in the United States* (H.4.2) which provides aggregates both for large commercial banks and for large U.S. branches and agencies of foreign banks.

2. Report title: Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks
Agency form number: FR 2069
OMB control number: 7100-0030
Frequency: Weekly
Reporters: Large U.S. branches and agencies of foreign banks

Annual reporting hours: As the proposal calls for increasing the number of FR 2069 respondents and the number of items collected, the burden that the Federal Reserve imposes on the public by collecting the FR 2069 will increase. An estimate of the burden of the revised report will be prepared in consultation with respondents.

Estimated average hours per response: The Federal Reserve requests estimates from respondents.
Number of respondents: 90
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. § 3105(b)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: This voluntary report is a mainstay of the reporting system from which data for analysis of current banking developments are derived. The report, together with data from other sources, is used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole.

The Federal Reserve publishes the data in aggregate form in two statistical releases that are followed closely by other government agencies, the banking industry, the financial press, and other users. These are the weekly statistical releases *Assets and Liabilities of Commercial Banks in the United States* (H.8) which provides a balance sheet for the banking industry as a whole and *Weekly Consolidated Condition Report of Large Commercial Banks in the United States* (H.4.2) which provides aggregates both for large commercial banks and for large U.S. branches and agencies of foreign banks.

3. Report title: Domestic Finance Company Report of Consolidated Assets and Liabilities
Agency form number: FR 2248
OMB control number: 7100-0005
Frequency: Monthly
Reporters: Finance companies
Annual reporting hours: 1,920
Estimated average hours per response: 1.3I10*Number of respondents:* 120
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. §225(a)) and is given confidential treatment (5 U.S.C. §552(b)(4)).

Abstract: The FR 2248 collects balance sheet data on major categories of consumer and business credit receivables and on major short-term liabilities. For quarter-end months (March, June, September, and December), the report collects information on other assets and liabilities outstanding as well as information on capital accounts in order to provide a full balance sheet.

The authorized size of the FR 2248 reporting panel is 142 finance companies; the Federal Reserve proposes to reduce the authorized panel size to 120 finance companies. The current FR 2248 reporting form broadly classifies finance company assets as retail, wholesale, lease, or other. The Federal Reserve proposes to reorganize the form by classifying assets as consumer-, real estate-, business-, or lease-related to make the form more compatible with respondents' accounting procedures and thus reduce burden. There are no changes to the liabilities items. In the supplemental section, several items were added, and securitization items were reorganized to be consistent with the proposed assets classifications.

4. Report title: Finance Company Survey
Agency form number: FR 3033s
OMB control number: 7100-0277
Frequency: One-time
Reporters: Finance companies
Annual reporting hours: 840
Estimated average hours per response: 1.4
Number of respondents: 600

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. §§225(a), 263, 353-359) and is given confidential treatment (5 U.S.C. §552(b)(4)).

Abstract: The FR 3033s survey, which is collected about every five years, asks for detailed information on the assets and liabilities of a stratified random sample of domestic finance companies. The sample is based on the responses from the first stage of the survey, the Finance Company Questionnaire (FR 3033p; OMB No. 7100-0277). From the FR 3033p questionnaires returned, the Federal Reserve will determine which of the respondents are eligible for the FR 3033s panel. Companies will be removed from the potential FR 3033s panel if they report that they are out of business, are not a finance company, or are a subsidiary of a bank. The survey sample will be stratified by size groups based on total receivables and by specialization in receivables and will include all FR 3033p respondents that reported at least $10 million in total receivables. For coverage of smaller respondents, the survey sample will include all smaller companies that currently file the FR 2248 plus a sufficient number of other smaller companies to provide adequate representation. Proportional allocation will be used to draw a random sample.

The 1990 FR 3033s reporting form broadly classified finance company assets as retail, wholesale, lease, or other. The Federal Reserve proposes to reorganize the information by classifying assets as consumer-, real estate-, business-, or lease-related to make the form more compatible with existing accounting procedures of the respondents and to make the form easier to complete. There is one minor consolidation in the liabilities items. In the supplemental section, several items were added, and securitization items were reorganized to be consistent with the proposed assets classifications.

Board of Governors of the Federal Reserve System, March 26, 1996

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–7812 Filed 3–29–96; 8:45 am]

Billing Code 6210–01–F

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 April 15, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. James and Sheryl Walston, South Sioux City, Nebraska; to acquire an additional 4.0 percent, for a total of 13.7 percent; Barton J. and Terri R. Gotch, South Sioux City, Nebraska, to acquire an additional 3.2 percent, for a total of 12.2 percent; Bill J. and Myrna Gotch, South Sioux City, Nebraska; to acquire a total of 2.7 percent of the voting shares of Siouxland National Corporation, South Sioux City, Nebraska, and thereby indirectly acquire Siouxland National Bank, South Sioux City, Nebraska.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Edwin Warren Rumage, Trustee, Jacksboro, Texas; to acquire a total of 52.38 percent of the voting shares of Jacksboro National Bancshares, Inc., Jacksboro, Texas, and thereby indirectly acquire Jacksboro Bancshares Delaware, Jacksboro, Texas, and Jacksboro National Bank, Jacksboro, Texas.

Board of Governors of the Federal Reserve System, March 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7813 Filed 3–29–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing 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, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 25, 1996.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Bank of Boston Corp., Boston, Massachusetts; to acquire 100 percent of the voting shares of BayBanks, Inc., Boston, Massachusetts, and thereby indirectly acquire BayBank, N.A., Boston, Massachusetts, and BayBank NH, Derry, New Hampshire.

In connection with this application, Applicant also has applied to acquire BayBank FSB, Nashua, New Hampshire, and thereby engage in operating a federally chartered savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y; and 10.0 percent of the voting shares of NYCE Corp., Woodcliff Lake, New Jersey, and thereby engage in data processing and other nonbanking activities related to EFT networks through the operation of automated

teller machine and point-of-sale networks, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp., Green Bay, Wisconsin, and Associated Banc-Shares, Inc., Madison, Wisconsin; to acquire and merge with F&M Bankshares of Reedsburg, Inc., Reedsburg, Wisconsin, and thereby indirectly acquire Farmers and Merchants Bank, Reedsburg, Wisconsin.

2. CBR Holdings, Inc., Winnetka, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Ravenswood, Chicago, Illinois (in organization).

Board of Governors of the Federal Reserve System, March 26, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–7814 Filed 3–29–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 952–3429]

Timothy R. Bean d/b/a DMC Publishing Group; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Laguna Hills, California-based company from misrepresenting, in its advertisements for a work-at-home business, the income, earnings, or sales from any business opportunity and would prohibit any claims about past, present, or future earnings unless, at the time of making the representation, it possesses and relies upon competent and reliable evidence that substantiates the claim. The consent agreement settles allegations stemming from advertisements on the Internet for Bean/DMC's program to operate a publishing and printing business at home.

DATES: Comments must be received on or before May 31, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

C. Steven Baker, Chicago Regional Office, Federal Trade Commission, Suite 1860, 55 East Monroe Street, Chicago, IL 60603. 312–353–8156

David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave., NW., Washington, DC 20580. 202–326–3224

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of Timothy R. Bean, individually and doing business as DMC Publishing Group.

[File No. 952–3429]

The Federal Trade Commission having initiated an investigation of certain acts and practices of Timothy R. Bean, individually and doing business as DMC Publishing Group, (hereinafter referred to as ''proposed respondent''), and it is now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Timothy R. Bean, individually and doing business as DMC Publishing Group, and counsel for the Federal Trade Commission that:

1. Proposed respondent Timothy R. Bean is an individual doing business as DMC Publishing Group with his principal office or place of business at 26052 Merit Circle, Suite 107, Laguna Hills, California 92653.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (6) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent, (1) Issue its compliant corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he might have to any other manner of service. The compliant may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the compliant and the order contemplated hereby. He understands that once the

order has been issued, he will be required to file one or more compliance reports showing he has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Timothy R. Bean, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the business opportunity ''Profit from Publishing and Print Brokerage at Home,'' or any other business opportunity, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, the past, present, or future profits, earnings, income, or sales from such business opportunity.

II

It is further ordered that respondent Timothy R. Bean, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the business opportunity ''Profit from Publishing and Print Brokerage at Home,'' or any other business opportunity, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Conmnmission Act, do forthwith cease and desist from representing, in any manner, the past, present, or future profits, earnings, income, or sales from such business opportunity, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or his successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in his possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall:

A. Within thirty (30) days from the effective date of this Order deliver a copy of this Order to each of his officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order.

B. For a period of ten (10) years from the effective date of this Order deliver a copy of this Order to each of his future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order, within three (3) days after the person assumes such position.

V

It is further ordered that from the date this Order becomes final, respondent shall notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities.

VI

It is further ordered that within (60) days after service of this Order, and at such other times as the Commission may require, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

VII

This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Timothy R. Bean, individually and doing business as DMC Publishing Group.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns claims made by the respondent in his advertising, including advertising through the Internet, for his program to operate a publishing and printing business at home. The Commission's complaint charges that the respondent's advertising represents, directly or by implication, that the amount of money represented in the advertisements is representative, or typical, of what individuals who purchase respondent's program will generally achieve. The claim is alleged to be false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because the amount of money represented in the advertisements is not representative, or typical, of what individuals who purchase respondent's program will generally achieve.

The Commission's complaint also charges that the respondent falsely represented that he possessed and relied upon a reasonable basis that substantiated the above claim. The Commission's complaint alleges that this representation is false and misleading, and in violation of section 5 of the Federal Trade Commission Act,

15 U.S.C. 45, because at the time he made the representation respondent did not possess and rely upon a reasonable basis that substantiated the claim.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting, directly or by implication in his advertising for his home publishing and printing business opportunity, or any other business opportunity, the past, present, or future profits, earnings, income, or sales from such business opportunity.

Part II of the proposed order prohibits the respondent from representing, directly or by implication in his advertising for his home publishing and printing business opportunity, or any other business opportunity, the past, present, or future profits, earnings, income, or sales from such business opportunity, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence that substantiates the claim.

Part III of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part IV of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part V of the proposed order requires the respondent to notify the Commission of any discontinuance of his present business or employment and of each affiliation with a new business or employment. Part VI of the proposed order requires the respondent to file one or more compliance reports. Part VII of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 96–7859 Filed 3–29–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 962–3019]

Brian Coryat d/b/a Enterprising Solutions; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Santa Barbara, California-based respondent from misrepresenting, in his advertisements for a credit repair kit, any remedy for credit history problems available under the Fair Credit Reporting Act, including the ability to remove accurate but adverse information from credit reports. It would also prohibit the company from misrepresenting, in its advertisement for a work-at-home business, the income, earnings, or sales from any business opportunity and would prohibit any claims about past, present, or future earnings unless, at the time of making the representation, it possesses and relies upon competent and reliable evidence that substantiates the claim. The consent agreement settles allegations stemming from advertisements on the Internet for Coryat/Enterprising's The Credit Repair Kit product and Credit Repair Agency business opportunity.

DATES: Comments must be received on or before May 31, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

C. Steven Baker, Chicago Regional Office, Federal Trade Commission, Suite 1860, 55 East Monroe Street, Chicago, IL 60603. 312–353–8156

David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave, NW., Washington, DC 20580. 202–326–3224

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

[File No. 962–3019]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Brian Coryat, individually and doing business as Enterprising Solutions.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Brian Coryat, individually and doing business as Enterprising Solutions (hereinafter referred to as ''proposed respondent''), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Brian Coryat, individually and doing business as Enterprising Solutions, and counsel for the Federal Trade Commission that:

1. Proposed respondent Brian Coryat is an individual doing business as Enterprising Solutions with his principal office or place of business at 6 Harbor Way, Suite 194, Santa Barbara, California 93109.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute

an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing he has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it become final.

Order

Definitions

1. ''Credit Report'' means any written, oral, or other communication of information by a consumer reporting agency bearing on a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit.

2. ''Credit Repair Product'' means any product or service to improve a person's credit report by removing adverse information appearing therein, changing the rating of such information from negative to positive, or otherwise enhancing the person's credit report.

I

It is ordered that respondent Brian Coryat, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any credit repair product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, either directly or indirectly, in writing, via a computer communications network, or by any other means, any right or remedy available under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.,* including, but not limited to, the ability to remove adverse information in any credit report.

II

It is furthered ordered that respondent Brian Coryat, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the Credit Repair Agency business opportunity, or any other business opportunity, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, the past, present, or future profits, earnings, income, or sales from such business opportunity.

III

It is furthered ordered that respondent Brian Coryat, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the Credit Repair Agency business opportunity, or any other business opportunity, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, the past, present, or future profits, earnings, income, or sales from such business opportunity, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

IV

It is furthered ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or his successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in his possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is furthered ordered that respondent shall:

A. Within thirty (30 days from effective date of this Order deliver a copy of this Order to each of his officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order.

B. For a period of ten (10) years from the effective date of this Order deliver a copy of this Order to each of his future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order, within three (3) days after the person assumes such position.

VI

It is furthered ordered that from the date of this Order becomes final, respondent shall notify the Commission within thirty (30) days of the discontinuance of his present business or employment and each of affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities.

VII

It is furthered ordered that within sixty (60) days after service of this Order, and at such other times as the Commission may require, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

VIII

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Brian Coryat, individually and doing business as Enterprising Solutions.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns claims made by the respondent in his advertising, including advertising through the Internet, for The Credit Repair Kit product and the Credit Repair Agency business opportunity. The Commission's complaint charges that the respondent's advertising represents,directly or by implication, that consumers can remove bankruptcies, judgments, foreclosures, liens, repossessions, late payments, and other adverse items of information from their credit reports even where such information is accurate and not obsolete. The claim is alleged to be false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because most consumers cannot remove adverse items of information from their credit reports where such information is accurate and not obsolete.

The complaint also charges that the respondent's advertising represents, directly or by implication, that the amount of money represented in the advertisements is representative, or typical, of what individuals who purchase respondent's Credit Repair Agency business opportunity will generally achieve. The claim is alleged to be false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because the amount of money represented in the advertisements is not representative, or typical, of what individuals who purchase respondent's program will generally achieve.

The Commission's complaint also charges that the respondent falsely represented that he possessed and relied upon a reasonable basis that substantiated the above claim. The Commission's complaint alleges that this representation is false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because at the time he made the representation respondent did not possess and rely upon a reasonable basis that substantiated the claim.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting, directly or by implication in his advertising for any credit repair product any right or remedy available under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, including, but not limited to, the ability to remove adverse information in any credit report. Part II of the proposed order prohibits the respondent from misrepresenting, directly or by implication in his advertising for his Credit Repair Agency business opportunity, or any other business opportunity, the past, present, or future profits, earning, income, or sales from such business opportunity. Part III of the proposed order prohibits the respondent from representing, directly or by implication in his advertising for his Credit Repair Agency business opportunity, or any other business opportunity, the past, present, or future profits, earnings, income, or sales from such business opportunity, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence that substantiates the claim.

Part IV of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part V of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part VI of the proposed order requires the respondent to notify the Commission of any discontinuance of his present business or employment and of each affiliation with a new business or employment. Part VII of the proposed order requires the respondent to file one or more compliance reports. Part VIII of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 96–7860 Filed 3–29–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3436]

Robert Serviss d/b/a Excell Communications; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Stamford, Connecticut-based respondent from misrepresenting, in his advertisements for a work-at-home business, the income, earnings, or sales from any business opportunity and would prohibit any claims about past, present, or future earnings unless, at the time of making the representation, it possesses and relies upon competent and reliable evidence that substantiates the claim. The consent agreement settles allegations stemming from advertisements on the Internet for Serviss/Excel's ''ON–LINE Profits Made Easy'' business opportunity.

DATES: Comments must be received on or before May 31, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

C. Steven Baker, Chicago Regional Office, Federal Trade Commission, Suite 1860, 55 East Monroe Street, Chicago, IL 60603. 312–353–8156
David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave, NW, Washington, DC 20580. 202–326–3224

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Robert Serviss; individually and doing business as Excel Communications
File No. 952–3436

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Robert Serviss, individually and doing business as Excel Communications (hereinafter referred to as ''proposed respondent''), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Robert Serviss, individually and doing business as Excel Communications, his attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Robert Serviss is an individual doing business as Excel Communications with his principal office or place of business at 2169 Summer Street, Suite 115, Stamford, Connecticut 06095.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the preceding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing he has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Robert Serviss, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the ''ON-LINE Profits Made Easy'' business opportunity, or any other business opportunity, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, the past, present, or future profits, earnings, income, or sales from such business opportunity.

II

It is further ordered that respondent Robert Serviss, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the ''ON-LINE Profits Made Easy'' business opportunity, or any other business opportunity, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, the past, present, or future profits, earnings, income, or sales from such business opportunity, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or his successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in his possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall:

A. Within thirty (30) days from the effective date of this Order deliver a copy of this Order to each of his officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order.

B. For a period of ten (10) years from the effective date of this Order deliver a copy of this Order to each of his future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order, within three (3) days after the person assumes such position.

V

It is further ordered that from the date this Order becomes final, respondent shall notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities.

VI

It is further ordered that within sixty (60) days after service of this Order, and at such other times as the Commission may require, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

VII

This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Robert Serviss, individually and doing business as Excel Communications.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns claims made by the respondent in his advertising, including advertising through the Internet, for his ''ON-LINE Profits Made Easy'' business opportunity. The Commission's complaint charges that the respondent's advertising represents, directly or by implication, that the amount of money represented in the advertisements is representative, or typical, of what individuals who purchase respondent's program will generally achieve. The claim is alleged to be false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because the amount of money represented in the advertisements is not representative, or typical, of what individuals who purchase respondent's program will generally achieve.

The Commission's complaint also charges that the respondent falsely represented that he possessed and relied upon a reasonable basis that substantiated the above claim. The Commission's complaint alleges that this representation is false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because at the time he made the representation respondent did not possess and rely upon a reasonable basis that substantiated the claim.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting, directly or by implication in his advertising for the ''ON-LINE Profits Made Easy'' business opportunity, or any other business opportunity, the past, present, or future profits, earnings, income, or sales from such business opportunity.

Part II of the proposed order prohibits the respondent from representing, directly or by implication in his advertising for the ''ON-LINE Profits Made Easy'' business opportunity, or any other business opportunity, the past, present, or future profits, earnings, income, or sales from such business opportunity, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence that substantiates the claim.

Part III of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part IV of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part V of the proposed order requires the respondent to notify the Commission of any discontinuance of his present business or employment and of each affiliation with a new business or employment. Part VI of the proposed order requires the respondent to file one or more compliance reports. Part VII of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 96–7861 Filed 3–29–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 962–3016]

Lyle R. Larsen d/b/a Momentum; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Bellevue, Washington-based respondent from misrepresenting, in his advertisements for a credit repair kit, any remedy for credit history problems available under the Fair Credit Reporting Act, including the ability to remove accurate but adverse information from credit reports. It would also prohibit the company from misrepresenting the legality of any credit repair product and would require it to disclose that consumers who follow the programs may violate federal criminal laws. The consent agreement settles allegations stemming from advertisements on the Internet for Larson/Momentum's CreditPlus purported credit repair product.

DATES: Comments must be received on or before May 31, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

C. Steven Baker, Chicago Regional Office, Federal Trade Commission, Suite 1860, 55 East Monroe Street, Chicago, IL 60603. 312–353–8156

David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave, NW., Washington DC 20580. 202–326–3224

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Lyle R. Larson, individually and doing business as Momentum.

[File No. 962–3016]

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Lyle R. Larson individually and doing business as Momentum (hereinafter referred to as ''proposed respondent''), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Lyle R. Larson, individually and doing business as Momentum, and counsel for the Federal Trade Commission that:

1. Proposed respondent Lyle R. Larson is an individual doing business as Momentum with his principal office or place of business at 3033 127th Place SE, Suite I–21, Bellevue, Washington 98005.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action a it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing he has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

1. ''Credit Report'' means any written, oral, or other communication of information by a consumer reporting agency bearing on a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit.

2. ''Credit Repair Product'' means any product or service to improve a person's credit report by removing adverse information appearing therein, changing the rating of such information from

negative to positive, or otherwise enhancing the person's credit report.

I

It is ordered that respondent Lyle R. Larson, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any credit repair product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, either directly or indirectly, in writing, via a computer communications network, or by any other means:

A. Any right of remedy available under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, including, but not limited to, the ability to remove adverse information in any credit report; and

B. The legality of any credit repair product.

II

It is further ordered that respondent Lyle R. Larson, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any credit repair product involving the creation of a new credit file or tax identification number, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose in any advertisement or promotional material, including any advertisement or promotion via a computer communications network, that:

A. Making misrepresentations to the Internal Revenue Service may be a federal crime;

B. Misrepresenting one's social security number for any purpose may be a federal crime;

C. Making misrepresentations for a loan application may be a federal crime; and

D. Making misrepresentations to a financial institution may be a federal crime.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or his successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in his possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall:

A. Within thirty (30) days from the effective date of this Order deliver a copy of this Order to each of his officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order.

B. For a period of ten (10) years from the effective date of this Order deliver a copy of this Order to each of his future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order, within three (3) days after the person assumes such position.

V

It is further ordered that for a period of five (5) years from the date this Order becomes final, respondent shall notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of each affiliation with a new business or employment involving the advertising, offering for sale, sale, or distribution of any credit repair product. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities.

VI

It is further ordered that within sixty (60) days after service of this Order, and at such other times as the Commission may require, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

VII

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Lyle R. Larson, individually and doing business as Momentum.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns claims made by the respondent in his advertising, including advertising through the Internet, for the CreditPlus credit repair product. The Commission's complaint charges that the respondent's advertising represents, directly or by implication, that: (a) Consumers can remove bankruptcies, judgments, foreclosures, liens, repossessions, late payments, and other adverse items of information from their credit reports even where such information is accurate and not obsolete; and (b) respondent's product whereby consumers create new credit files is legal. The claims are alleged to be false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because: (a) Most consumers cannot remove adverse items of information

from their credit reports where such information is accurate and not obsolete; and (b) respondent's product whereby consumers create new credit files is not legal. The Commission's complaint also charges that the respondent's failure to disclose that consumers who follow respondent's product to create new credit files will violate certain federal criminal laws, is a deceptive practice in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting, directly or by implication in his advertising for any credit repair product: (a) Any right or remedy available under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, including, but not limited to, the ability to remove adverse information in any credit report; and (b) the legality of any credit repair product. Part II of the proposed order prohibits the respondent from failing to disclose in any advertisement for any credit repair product that: (a) Making misrepresentations to the Internal Revenue Service may be a federal crime; (b) misrepresenting one's social security number for any purpose may be a federal crime; (c) making misrepresentations for a loan application may be a federal crime; and (d) making misrepresentations to a financial institution may be a federal crime.

Part III of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part IV of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part V of the proposed order requires the respondent to notify the Commission of any discontinuance of his present business or employment and of each affiliation with a new business or employment. Part VI of the proposed order requires the respondent to file one or more compliance reports. Part VII of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 96–7862 Filed 3–29–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3441]

Rick A. Rahim d/b/a NBDC Credit Resource Publishing; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Springfield, Virginia-based respondent from misrepresenting, in his advertisements for a credit repair product, the legality of any credit repair product available under the Fair Credit Reporting Act, and would require it to disclose that consumers who follow the programs may violate federal criminal laws. The consent agreement settles allegations stemming from advertisements on the Internet for Rahim/NBDC's purported credit repair product.

DATES: Comments must be received on or before May 31, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, Suite 1860, 55 East Monroe Street, Chicago, IL 60603, 312–353–8156. David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave, NW., Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Rick A. Rahim, individually and doing business as NBDC Credit Resource Publishing.

File No. 952–3441.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Rick A. Rahim, individually and doing business as NBDC Credit Resource Publishing (hereinafter referred to as ''proposed respondent''), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Rick A. Rahim, individually and doing business as NBDC Credit Resource Publishing, and counsel for the Federal Trade Commission that:

1. Proposed respondent Rick A. Rahim is an individual doing business as NBDC Credit Resource Publishing with his principal office or place of business at 7010 Brookfield Plaza, Suite 322, Springfield, Virginia 22150.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that

the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. the order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing he has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

1. ''Credit Report'' means any written, oral, or other communication of information by a consumer reporting agency bearing on a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit.

2. ''Credit Repair Product'' means any product or service to improve a person's credit report by removing adverse information appearing therein, changing the rating of such information from negative to positive, or otherwise enhancing the person's credit report.

I

It is ordered that respondent Rick A. Rahim, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any credit repair product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, either directly or indirectly, in writing, via a computer communications network, or by any other means, the legality of any such credit repair product.

II

It is further ordered that respondent Rick A. Rahim, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any credit repair product involving the creation of a new credit file or tax identification number, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose in any advertisement or promotional material, including any advertisement or promotion via a computer communications network, that:

A. Making misrepresentations to the Internal Revenue Service may be a federal crime;

B. Misrepresenting one's social security number for any purpose may be a federal crime;

C. Making misrepresentations for a loan application may be a federal crime; and

D. Making misrepresentations to a financial institution may be a federal crime.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or his successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in his possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall:

A. Within thirty (30) days from the effective date of this Order deliver a copy of this Order to each of his officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order.

B. For a period of ten (10) years from the effective date of this Order deliver a copy of this Order to each of his future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order, within three (3) days after the person assumes such position.

It is further ordered that from the date this Order becomes final, respondent shall notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities.

VI

It is further ordered that within sixty (60) days after service of this Order, and at such other times as the Commission may require, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

VII

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Rick A. Rahim, individually and doing business as NBDC Credit Resource Publishing.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns claims made by the respondent in his advertising, including advertising through the Internet, for his credit repair product. The Commission's complaint charges that the respondent's advertising represents, directly or by implication, that respondent's product whereby consumers create new credit files is legal. The claim is alleged to be false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, because respondent's product whereby consumers create new credit files is not legal. The Commission's complaint also charges that the respondent's failure to disclose that consumers who follow respondent's product to create new credit files will violate certain federal criminal laws, is a deceptive practice in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting, directly or by implication in his advertising for any credit repair product the legality of the credit repair product. Part II of the proposed order prohibits the respondent from failing to disclose in any advertisement for any credit repair product that: (a) making misrepresentations to the Internal Revenue Service may be a federal crime; (b) misrepresenting one's social security number for any purpose may be a federal crime; (c) making misrepresentations for a loan application may be a federal crime; and (d) making misrepresentations to a financial institution may be a federal crime.

Part III of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part IV of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part V of the proposed order requires the respondent to notify the Commission of any discontinuance of his present business or employment and of each affiliation with a new business or employment. Part VI of the proposed order requires the respondent to file one or more compliance reports. Part VII of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 96–7863 Filed 3–29–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 962–3027]

Martha Clark d/b/a Simplex Systems; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Niverville, New York-based respondent from misrepresenting, in her advertisements for a credit repair kit, any remedy for credit history problems available under the Fair Credit Reporting Act, including the ability to remove accurate but adverse information from credit reports. The consent agreement settles allegations stemming from advertisements on the Internet for Clark/Simplex's Guaranteed Credit Doctor purported credit repair kit.

DATES: Comments must be received on or before May 31, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

C. Steven Baker, Chicago Regional Office, Federal Trade Commission, Suite 1860, 55 East Monroe Street, Chicago, IL 60603, 312–353–8156

David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave, NW, Washington, DC 20580, 202–326–3224

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Martha Clark, individually and doing business as Simplex Services.

[File No. 962–3027]

The Federal Trade Commission having initiated an investigation of certain acts and practices of Martha Clark, individually and doing business as Simplex Services (hereinafter referred to as ''proposed respondent''), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Martha Clark, individually and doing business as Simplex Services, and counsel for the Federal Trade Commission that:

1. Proposed respondent Martha Clark is an individual doing business as Simplex Services with her principal office or place of business at 135 Kipp

U., P.O. Box 36, Niverville, New York 12130.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right she might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. She understands that once the order has been issued, she will be required to file one or more compliance reports showing she has fully complied with the order. Proposed respondent further understands that she may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

1. ''Credit Report'' means any written, oral, or other communication of information by a consumer reporting agency bearing on a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit.

2. ''Credit Repair Product'' means any product or service to improve a person's credit report by removing adverse information appearing therein, changing the rating of such information from negative to positive, or otherwise enhancing the person's credit report.

I

It is ordered that respondent Martha Clark, her agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any credit repair product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, either directly or indirectly, in writing, via a computer communications network, or by any other means, any right or remedy available under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, including, but not limited to, the ability to remove adverse information in any credit report.

II

It is further ordered that respondent shall:

A. Within thirty (30) days from the effective date of this Order deliver a copy of this Order to each of her officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order.

B. For a period of five (5) years from the effective date of this Order deliver a coy of this Order to each of her future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order, within three (3) days after the person assumes such position.

III

It is further ordered that for a period of five (5) years from the date this Order becomes final, respondent shall notify the Commission within thirty (30) days of the discontinuance of her present business or employment and of each affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include her new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities.

IV

It is further ordered that within sixty (60) days after service of this Order, and at such other times as the Commission may require, respondent shall file with the Commission a report, in writing, setting forth in detail the manner and form in which she has complied with this Order.

V

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not

violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Martha Clark, individually and doing business as Simplex Solutions.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns claims made by the respondent in her advertising, including advertising through the Internet, for the Guaranteed Credit Doctor credit repair kit. The Commission's complaint charges that the respondent's advertising represents, directly or by implication, that consumers can remove bankruptcies, judgments, foreclosures, liens, repossessions, late payments, and other adverse items of information from their credit reports even where such information is accurate and not obsolete. The claim is alleged to be false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because most consumers cannot remove adverse items of information from their credit reports where such information is accurate and not obsolete.

The proposed consent order contains provisions designed to remedy the violation charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting, directly or by implication in her advertising for any credit repair product any right or remedy available under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, including, but not limited to, the ability to remove adverse information in any credit report. Part II of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part III of the proposed order requires the respondent to notify the Commission of any discontinuance of her present business or employment and of each affiliation with a new business or employment. Part IV of the proposed order requires the respondent to file one or more compliance reports. Part V of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 96–7864 Filed 3–29–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3431]

Sherman G. Smith d/b/a Starr Communications; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Salt Lake City-based respondent from misrepresenting, in his advertisements for a work-at-home business, the income, earnings, or sales from any business opportunity and would prohibit any claims about past, present, or future earnings unless, at the time of making the representation, it possesses and relies upon competent and reliable evidence that substantiates the claim. The consent agreement settles allegations stemming from advertisements on the Internet for Smith/Starr's ''U.S. Government Tracer Business Program'' business opportunity.

DATES: Comments must be received on or before May 31, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Steve Baker, Chicago Regional Office, Federal Trade Commission, Suite 1860, 55 East Monroe Street, Chicago, IL 60603. 312–353–8156. David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave, NW, Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Sherman G. Smith, individually and doing business as Starr Communications.

[File No. 952–3431]

The Federal Trade Commission having initiated an investigation of certain acts and practices of Sherman G. Smith, individually and doing business as Starr Communications (hereinafter referred to as ''proposed respondent''), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Sherman G. Smith, individually and doing business as Starr Communications, his attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sherman G. Smith is an individual doing business as Starr Communications with his principal office or place of business at 78 West Broadway, No. 2007 North, Salt Lake City, Utah 84101.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the

proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statue for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing he has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Sherman G. Smith, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the ''U.S. Government Tracer Business Program,'' or any other business opportunity, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, the past, present, or future profits, earnings, income, or sales from such business opportunity.

II

It is further ordered that respondent Sherman G. Smith, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the ''U.S. Government Tracer Business Program,'' or any other business opportunity, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, in the past, present, or future profits, earnings, income, or sales from such business opportunity, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or his successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in his possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall:

A. Within thirty (30) days from the effective date of this Order deliver a copy of this Order to each of his officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order.

B. For a period of ten (10) years from the effective date of this Order deliver a copy of this Order to each of his future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order, within three (3) days after the person assumes such position.

V

It is further ordered that from the date this Order becomes final, respondent shall notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities.

VI

It is further ordered that within sixty (60) days after service of this Order, and at such other times as the Commission may require, respondents shall file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

VII

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and

the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Sherman G. Smith, individually and doing business as Starr Communications.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns claims made by the respondent in his advertising, including advertising through the Internet, for his ''U.S. Government Tracer Business Program.'' The Commission's complaint charges that the respondent's advertising represents, directly or by implication, that the amount of money represented in the advertisements is representative, or typical, of what individuals who purchase respondent's program will generally achieve. The claim is alleged to be false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because the amount of money represented in the advertisements is not representative, or typical, of what individuals who purchase respondent's program will generally achieve.

The Commission's complaint also charges that the respondent falsely represented that he possessed and relied upon a reasonable basis that substantiated the above claim. The Commission's complaint alleges that this representation is false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because at the time he made the representation respondent did not possess and rely upon a reasonable basis that substantiated the claim.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting, directly or by implication in his advertising for the ''U.S. Government Tracer Business Program,'' or any other business opportunity, the past, present, or future profits, earnings, income, or sales from such business opportunity.

Part II of the proposed order prohibits the respondent from representing, directly or by implication in his advertising for the ''U.S. Government Tracer Business Program,'' or any other business opportunity, the past, present, or future profits, earnings, income, or sales from such business opportunity, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence that substantiates the claim.

Part III of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part IV of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part V of the proposed order requires the respondent to notify the Commission of any discontinuance of his present business or employment and of each affiliation with a new business or employment. Part VI of the proposed order requires the respondent to file one or more compliance reports. Part VII of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 96–7865 Filed 3–29–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 952–3437]

Randolf D. Albertson d/b/a Wolverine Capital; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit the Plainwell, Michigan-based company from misrepresenting, in its advertising for cash grant assistance programs, the number of people who are approved for grants and the services or assistance provided in obtaining grants, loans, or any other financial product or service. The consent agreement settles allegations stemming from advertisements on the Internet which claim that, for a fee, Albertson/Wolverine will match consumers with private foundations likely to give them money for business, travel, education, or debt consolidation.

DATES: Comments must be received on or before May 31, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, Suite 1860, 55 East Monroe Street, Chicago, IL 60603, 312–353–8156. David Medine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave, NW, Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Randolf D. Albertson, individually and doing business as Wolverine Capital.

[File No. 952–3437]

The Federal Trade Commission having initiated an investigation of certain acts and practices of Randolf D. Albertson, individually and doing business as Wolverine Capital, (hereinafter referred to as ''proposed respondent''), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Randolf D. Albertson, individually and doing business as Wolverine Capital,

and counsel for the Federal Trade Commission that:

1. Proposed respondent Randolf D. Albertson is an individual doing business as Wolverine Capital with his principal office or place of business at 1039 Gun River Drive, Plainwell, Michigan 49080.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicity released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing he has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Randolf D. Albertson, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the cash grant assistance program, or any substantially similar program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner:

A. The number of persons who are approved for grants; and

B. The services or assistance provided in obtaining grants, loans, or any other financial product or service.

II

It is further ordered that respondent Randolf D. Albertson, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of the cash grant assist program, or any substantially similar program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, the number of persons who are approved for grants, or the services or assistance provided in obtaining grants, loans, or any other financial product or service, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or his successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in his possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall:

A. Within thirty (30) days from the effective date of this Order deliver a copy of this Order to each of his officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order.

B. For a period of ten (10) years from the effective date of this Order deliver a copy of this Order to each of his future officers, agents, representatives, and employees who are engaged in the preparation or placement of advertisements, promotional materials or other such sales materials covered by this Order, within three (3) days after the person assumes such position.

V

It is further ordered that from the date this Order becomes final, respondent shall notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of each affiliation with a new business or employment. Each notice of affiliation with any new business or employment shall include his new business address and telephone number, current home address, and a statement describing the nature of the business or employment and the duties and responsibilities.

VI

It is further ordered that within sixty (60) days after service of this Order, and at such other times as the Commission may require, respondent shall file with the Commission a report, in writing,

setting forth in detail the manner and form in which he has complied with this Order.

VII

This Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later, provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Randolf D. Albertson, individually and doing business as Wolverine Capital.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns claims made by the respondent in his advertising, including advertising through the Internet, for a cash grant assistance program. The Commission's complaint charges that the respondent's advertising represents, directly or by implication, that he is able to obtain cash grants for most of his clients. The claim is alleged to be false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because respondent is not able to obtain cash grants for most of his clients. The Commission's complaint also charges that the respondent falsely represented that he possessed and relied upon a reasonable basis that substantiated the above claim. The Commission's complaint alleges that this representation is false and misleading, and in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, because at the time he made the representation respondent did not possess and rely upon a reasonable basis that substantiated the claim.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting, directly or by implication in his advertising for the cash grant assistance program, or any substantially similar program: (a) The number of persons who are approved for grants; and (b) the services or assistance provided in obtaining grants, loans, or any other financial product or service.

Part II of the proposed order prohibits the respondent from representing, directly or by implication in his advertising for the cash grant assistance program, or any substantially similar program, the number of persons who are approved for grants, or the services or assistance provided in obtaining grants, loans, or any other financial product or service, unless at the time of making such representation respondent possesses and relies upon competent and reliable evidence that substantiates the claim.

Part III of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part IV of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part V of the proposed order requires the respondent to notify the Commission of any discontinuance of his present business or employment and of each affiliation with a new business or employment. Part VI of the proposed order requires the respondent to file one or more compliance reports. Part VII of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 96–7866 Filed 3–29–96; 8:45 am]

BILLING CODE 6750–01–M

OFFICE OF GOVERNMENT ETHICS

Revocation of Post-Employment Waiver

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice; revocation of waiver.

SUMMARY: The Office of Government Ethics is giving notice of the termination, effective in three months, of a short-term post-Government employment waiver of certain ''senior employee'' restrictions it granted earlier this year to position holders in Senior Executive Service (SES) level 4. At the time the waiver was issued, OGE indicated that it was only a temporary measure to allow affected employees, their agencies and OGE itself adequate notice of, and time to respond to, the otherwise sudden imposition of certain senior employee restrictions as a result of 1996 increases to rates of basic pay.

EFFECTIVE DATE: July 1, 1996.

ADDRESSES: Copies of the OGE materials discussed in the Supplementary Information section below may be obtained, without charge, by contacting William E. Gressman, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. The materials are also available on OGE's electronic bulletin board TEBBS (''The Ethics Bulletin Board Service''). Information regarding TEBBS may also be obtained from Mr. Gressman.

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at OGE, telephone: 202–523–5757, ext. 1110; FAX: 202–523–6325.

SUPPLEMENTARY INFORMATION: On January 4, 1996, pursuant to its authority under 18 U.S.C. 207(c)(2)(C), the Office of Government Ethics granted a temporary waiver, effective until June 30, 1996, from the ''senior employee'' post-Government employment restrictions of 18 U.S.C. 207(c) and consequently subsection (f) to a specified group of executive branch employees. Under 5 CFR 2641.201(d) of OGE's post-employment regulations, a position waiver (exemption) determination is not required to be published in the Federal Register (the January 4, 1996 waiver determination was not published in the Federal

Register but was disseminated at that time to the executive branch departments and agencies.) Rather, there is provision for publication of any needed annual update to the compilation of exempted positions or categories of positions in appendix A to part 2641 (no update has been published thus far in 1996). Moreover, 90-day advance notice of any revocation of a position waiver, such as is being done in this document, is required to be published in the Federal Register.

The group of employees granted the waiver last January was constituted of all executive branch employees whose rate of basic pay on December 28, 1995 was less than the rate of basic pay payable for level V of the Executive Schedule and who as a direct result of Executive Order 12984, or any other Executive order or statute the terms of which are tied to the pay raise effected through that Executive order, would have their basic rate of pay increased to an amount equal to or greater than the rate of basic pay for level V of the Executive Schedule and whose position would then be described in 18 U.S.C. 207(c)(2)(A)(ii). See OGE's January 4, 1996 Memorandum (# DO–96–001) to heads of agencies, designated agency ethics officials and inspectors general.

On December 28, 1995, President Clinton signed Executive Order 12984, ''Adjustments of Certain Rates of Pay and Allowances.'' See 61 FR 237–246 (part III of the January 3, 1996 issue), as amended by E.O. 12990 of February 29, 1996 as to the uniformed services (see 61 FR 8467–8470 (March 5, 1996 issue)). Under Executive Order 12984, one effect of the pay raise, which was to take effect as early as January 7, 1996, was to make the rate of basic pay for Senior Executive Service level 4 (ES–4), at $109,400 per year, greater than the rate of basic pay for level V of the Executive Schedule, at $108,200 per year (the latter not having been increased since January 1993).

Thus, under the definitional provisions of the post-Government employment conflict of interest statute, 18 U.S.C. 207(c)(2)(A)(ii), employees at SES level 4, without any accretion in duties or responsibilities, were to become ''senior employees'' for purposes of section 207 and hence subject to more restrictive post-employment prohibitions. The ES–4 employees, the significantly large middle level of the SES who represent over 40% of the SES workforce, would thus have quickly become subject to the one-year ''cooling off'' restrictions at section 207(c) and the foreign entities restrictions at section 207(f), which apply to, inter alia, persons subject to section 207(c) restrictions. Further, this development was unrelated to the purposes underpinning the more restrictive post-employment prohibitions for higher-level ''senior employees.'' Instead, the impact on SES level 4 positions arose only from the combined effect of the Congressional freeze on Executive Schedule level V basic pay and E.O. 12984, and not an increase in level of responsibility.

Under 18 U.S.C. 207(c), a former ''senior employee'' of the executive branch is prohibited from making certain communications or appearances of behalf of another before an employee of a department or agency in which the former senior employee served in any capacity during the one-year period prior to his termination from a ''senior'' position. In addition, under 18 U.S.C. 207(f), for one year after service in a ''senior'' position terminates, no ''senior employee'' may knowingly, with the intent to influence a decision of an employee of a department or agency of the United States in carrying out his official duties, represent a foreign entity before any department or agency of the United States or aid or advise a foreign entity (defined as a government of a foreign country or a foreign political party). See the OGE Memorandum of December 19, 1995 (# DO–95–045) to designated agency ethics officials.

In its January 4, 1996 Memorandum, OGE noted that new post-employment restrictions have historically not taken effect without some notice to employees and agencies. Such notice permits employees to make any needed career adjustments and also allows agencies to plan for any resultant personnel changes. Last January, the very brief time frames of the impending pay and consequent post-employment changes, exacerbated by the extensive furloughs then prevailing, resulted in very little, if any, effective notice to affected employees and agencies. In these circumstances, OGE determined that the grant of a six-month waiver for the about-to-be newly affected employees, the SES level 4 incumbents, across the entire executive branch was appropriate.

In a related development, the White House Counsel, at the direction of the President, informed all executive departments and agencies in a January 5, 1996 Memorandum that Executive Order 12834 on post-employment ethics pledges for certain senior officials did not apply to employees paid at level 4 of the SES. See OGE's January 11, 1996 Memorandum (# DO–96–002) to designated agency ethics officials forwarding a copy of the White House Memorandum.

The Office of Government Ethics had three reasons for granting the January 4, 1996 short-term post-employment waiver. First, as noted, the six-month waiver period granted was intended to give affected employees fair notice of the otherwise sudden imposition of the section 207 (c) and (f) restrictions (the exemption will become permanent as to any such employee who leaves a senior employee position covered by the waiver before the waiver terminates on July 1, 1996). Second, this grace period, which continues through the end of June of this year, allows executive branch departments and agencies time, in addition to other personnel planning, to consider and prepare, if appropriate, requests for the long-term exemption of individual positions or categories of positions to be submitted to OGE for consideration pursuant to 5 CFR 2641.201(d)(3) of OGE's post-Government employment regulations. Under the statute and OGE's implementing regulations, the OGE Director may determine that a waiver is warranted with respect to a qualified position or a category of positions if the imposition of the restrictions with respect thereto would create an undue hardship to the department or agency concerned in obtaining qualified personnel to fill the position(s) and that granting the waiver would not create the potential for use of undue influence or unfair advantage. See 18 U.S.C. 207(c)(2)(C) and 5 CFR 2641.201(d)(5).

The third reason for OGE's short-term waiver earlier this year was that the six-month waiver period would give OGE time to discuss with the Congress any possible changes to 18 U.S.C. 207 that would take into consideration the effect of pay compression on the applicability of post-employment restrictions. As noted above, one underlying concept of the post-employment restrictions is that the more severe restrictions should only apply to those serving in the most senior career and political positions. The Office of Government Ethics has seen no evidence that the goals of the post-employment restrictions have not been properly met since the new post-employment law took effect in 1991, during which time those at SES level 4 have not been subject ''senior employee''-level restrictions.

Under section 207(c)(2)(A)(ii), the term ''senior employee'' includes any employee who is employed in a position not under the Executive Schedule (see 5 U.S.C. 5311–5318), including the Senior Executive Service, for which the basic rate of pay, exclusive of any locality-based pay adjustment under 5 U.S.C. 5302 (or any comparable adjustment pursuant to interim

authority of the President), is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule. Based on these considerations, OGE has now, with the clearance of the Office of Management and Budget, suggested to Congress that the section 207(c)(2)(A)(ii) be amended so that ''senior employee'' status thereunder would be triggered by the rate of basic pay for level 5 of the Senior Executive Service, rather than the rate of basic pay for level V of the Executive Schedule. The Office of Government Ethics will keep agencies informed of any progress on this legislative initiative.

Under 5 CFR 2641.201(d)(4), OGE hereby gives notice that the above-referenced post-employment waiver, granted in its January 4, 1996 Memorandum, will expire and is revoked effective on July 1, 1996.

Approved: March 25, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 96–7661 Filed 3–29–96; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: 45 CFR Part 95, Subpart F—Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation (FEP).

OMB No: 0992–0005.

Description: The advance planning document (APD) process, established in the rules at 45 CFR Part 95, Subpart F, is the procedure by which states request and obtain approval for Federal financial participation in their cost of acquiring automatic data processing equipment and services. The State agency submitted APD, provides the Department of Health and Human Services (DHHS) with the following information necessary to determine the State's need to acquire the requested ADP equipment and/or services:

1. a statement of need;
2. a requirements analysis and feasibility study;
3. a cost benefits analysis;
4. a proposed activity schedule; and,
5. a proposed budget.

DHHS' determination, of a State agency's need to acquire requested ADP equipment or services, is authorized at sections 204(a)(5), 452(a)(1), 1902(a)(4) and 1102 of the Social Security Act.

Respondents: State Governments.

Annual Burden Estimates

Advance Planning Document Reporting Requirement; Requested Approval

Annual Number of Respondents: 50.
Number of Annual Reports: 92.
Average Burden Per Response: 60.
Total Burden Hours: 5,520.

RFP and Contract Reporting Requirement

Annual Number of Respondents: 50.
Number of Annual Reports: 77.
Average Burden Per Response: 1.5.
Total Burden Hours: 115.5.

Emergency Funding Request Reporting Requirement

Annual Number of Respondents: 27.
Number of Annual Reports: 27.
Average Burden Per Response: 1.
Total Burden Hours: 27.

Service Agreement Recordkeeping Requirement

Annual Number of Respondents: 14.
Number of Annual Reports: 14.
Average Burden Per Response: 1.
Total Burden Hours: 14.

Recordkeeping Biennial Reports Requirement

Annual Number of Respondents: 50.
Number of Annual Reports: 50.
Average Burden Per Response: 1.5.
Total Burden Hours: 75.
Total State Burden Hours: 5,751.5.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests for copies may be made and comments forwarded to the Reports Clearance Officer over the Internet by sending a message to rkatson@acf.dhhs.gov. Internet messages must be submitted as an ASCII file without special characters or encryption.

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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 26, 1996.

Roberta Katson,

Director, Division of Information Resource Management Services.

[FR Doc. 96–7885 Filed 3–29–96; 8:45 am]

BILLING CODE 4184–01–M

Proposed Information Collection Activity, Comment Request

Title: Child Support Enforcement Program: State Plan Approval and Grant Procedures, State Plan Requirements, Standards for Program Operations, Federal Financial Participation, Optional Cooperative Agreements for Medical Support Enforcement, and Computerized Support Enforcement Systems.

Summary: The Office of Child Support Enforcement is requesting public comments for the information collection requirements included in a Notice of Proposed Rulemaking issued January 29, 1996 in the Federal Register (61 FR 2774). As required by the Paperwork Reduction act of 1995 (44 U.S.C. 3507 (d)), the Department of Health and Human Services is submitting a copy of the revised State plan preprint page to the Office of Management and Budget (OMB) for its review.

The NPRM indicated that State plan preprint page revisions would be submitted to OMB for approval. This pertains to submission of the revised State plan preprint page for Section 303.105, Procedures for Making Information Available to Consumer Reporting Agencies. Under the Paperwork Reduction Act of 1995, the rulemaking notice should have included a request for comments on those information collection requirements. This notice is to supplement that rulemaking.In addition,this notice corrects the OMB number listed in the NPRM associated with those paperwork requirements to 0970–0017.

Respondents: State governments.

Description: The State plan preprint and amendments serve as a contract

with OCSE in outlining the activities the States will perform as required by law in order for States to receive federal funds to meet the costs of these activities. The affected public is comprised of States receiving funds. We are asking for approval of the revised State plan preprint page for Periodic Reporting to Consumer Reporting Agencies to reflect new Federal requirements. Procedures to Improve Program Effectiveness, is amended by adding a new section 7, Periodic Reporting to Consumer Reporting Agencies, which requires the State to have procedures, (1) To periodically report information regarding the amount of overdue support owed by an absent parent to consumer reporting agencies when such amount exceeds $1,000 and is at least two months in arrears in accordance with section 666(a)(7) of the Act; and (2) for making absent parent information available to consumer reporting agencies when the amount of overdue support is less than $1,000. In addition, the revised page provides for indicating that the Secretary has granted the State an exemption from making information available to Consumer Reporting Agencies in accordance with § 302.70(d). The information collected on the State plan pages is necessary to enable OCSE to monitor compliance with the requirements in Title IV–D of the Social Security Act and implementing regulations.

Addresses and Dates: Consideration will be given to comments and suggestions submitted within 60 days of this publication. Comments may be forwarded to ACF in writing: Deputy Director, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447. Attn: Director, Policy and Planning Division, Mail Stop: OCSE/DPP.

Comments may be forwarded to OMB in writing: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

ANNUAL BURDEN ESTIMATE

Instrument	Number of respondents	Number of responses per respondent	Average burden minutes per response	Year	Total burden hours
OMB–0970–0017, revised	54	1	43	1st	38.7
OMB–0970–0017, revised	0	0	0	2nd	0
OMB–0970–0017, revised	0	0	0	3rd	0
Estimated Total Annual Response Burden Hours: 38.7					

The Department specifically requests comments by the public on this proposed collection of information on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validation of the methodology and assumptions used; (c) the quality, usefulness, and clarity of the information to be collected; and (d) ways to 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 technology, e.g., permitting electronic submission of responses.

Dated: March 26, 1996.

Roberta Katson,

Director, Division of Information, Resource Management Services.

[FR Doc. 96–7886 Filed 3–29–96; 8:45 am]

BILLING CODE 4184–01–M

Submission for OMB review; comment request

Title: Refugee Unaccompanied Minor Placement Report, Refugee Unaccompanied Minor Progress Report.

OMB No.: 0970–0034.

Description: The two reports collect information necessary to administer the refugee unaccompanied minor program. The ORR–3 (Placement Report) is submitted to ORR by the service provider agency at initial placement and whenever there is a change in the child's status, including termination from the program. The ORR–4 is submitted annually and records the child's progress toward the goals listed in the child's case plan.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–4	20	55	.250	275
ORR–3	20	50	.417	417
Estimated Total Annual Burden Hours: 692				

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: March 26, 1996.

Roberta Katson,

Director, Office of Information Resource Management Services.

[FR Doc. 96–7788 Filed 3–29–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 93F–0483]

Rio Linda Chemical Co., Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of that portion of a food additive petition (FAP 2A4408) proposing that the food additive regulations be amended to provide for the safe use of chlorine dioxide to disinfect waters contacting fresh meat, processed meat, and processed poultry.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3074.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 2, 1994 (59 FR 4924), FDA announced that a food additive petition (FAP 4A4408) had been filed by Rio Linda Chemical Co., Inc., 410 North 10th St., Sacramento, CA 95814 (currently, 1902 Channel Dr., West Sacramento, CA 95691–3477). The petition proposed to amend the food additive regulations to provide for the safe use of chlorine dioxide to disinfect waters contacting fresh meat, fresh poultry, processed meat, and processed poultry. FDA published a final rule in the Federal Register on March 3, 1995 (60 FR 11899), approving the use of chlorine dioxide in process water contacting whole fresh poultry (21 CFR 173.69).

Rio Linda Chemical Co., Inc., has now withdrawn that portion of the petition that relates to the use of chlorine dioxide to disinfect waters contacting fresh meat, processed meat, and processed poultry without prejudice to a future filing (21 CFR 171.7).

Dated: March 18, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–7785 Filed 3–29–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95D–0399]

Medical Devices; Premarket Notification (510(k)) Guidance Document for Contact Lens Care Products; Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Premarket Notification (510(k)) Guidance Document for Contact Lens Care Products.'' The draft guidance accompanies a proposed rule to reclassify rigid gas permeable contact lens solution; soft (hydrophilic) contact lens solution; and contact lens heat disinfecting units from class III (premarket approval) to class II (special controls), which appears elsewhere in this issue of the Federal Register. The draft guidance sets forth the tests FDA's Center for Devices and Radiological Health (CDRH) believes necessary to provide reasonable assurance of the safety and effectiveness of these devices. The draft guidance also sets forth the evidence that FDA believes should be submitted to demonstrate the substantial equivalence of new contact lens care products to contact lens care products already marketed.

DATES: Submit written comments by May 31, 1996.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled ''Premarket Notification (510(k)) Guidance Document for Contact Lens Care Products'' to the Division of Small Manufacturers Assistance (HFZ–22O), CDRH, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597 (outside MD 1–800–638–2041). Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2205.

SUPPLEMENTARY INFORMATION:

I. The Statutory Requirements

The Safe Medical Devices Act (the SMDA) (Pub. L. 101–629), which amended the medical device provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et. seq.*), contains specific provisions on transitional devices (i.e., those devices regulated as new drugs before the Medical Device Amendments of 1976 (Pub. L. 94–295) became law). See section 520(l) of the act (21 U.S.C. 360j(l)). In 1976, Congress classified all transitional products, including rigid gas permeable contact lens solutions; soft (hydrophilic) contact lens solutions; and contact lens heat disinfecting units into class III (premarket approval). The legislative history of the SMDA reflects congressional concern that many transitional devices were being overregulated in class III. H. Rept. 808, 101st Cong., 2d sess. 26-27 (1990); S. Rept. 513, 101st Cong., 2d sess. 26-27 (1990). Congress amended section 520(l) of the act to direct FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices and review the classification of those transitional devices that still remained in class III to determine if the devices should be reclassified into class II (special controls) or class I (general controls).

Under section 520(l)(5)(B) of the act, FDA was to publish regulations by December 1, 1992, either leaving the transitional class III devices in class III or revising their classification down to class I or class II. However, as permitted by section 520(l)(5)(C) of the act, in the Federal Register of November 30, 1992 (57 FR 56586), the agency published a notice extending the period for issuing such regulations until December 1, 1993. Due to limited resources, FDA was unable to publish regulations before the December 1, 1993 deadline. Nevertheless, elsewhere in this issue of the Federal Register, FDA is proposing to reclassify from class III (premarket approval) to class II (special controls) all transitional contact lens care products. In conjunction with the proposed

reclassification, FDA is announcing the availability of the draft guidance for premarket notification for the proposed reclassified contact lens care products entitled ''Premarket Notification (510(k)) Guidance Document for Contact Lens Care Products.''

II. The Draft Guidance

The draft guidance sets forth the testing that FDA believes ensures the continued safety and effectiveness of transitional contact lens care products. It also provides comprehensive directions to enable a manufacturer of a contact lens care product to submit a 510(k) premarket notification demonstrating substantial equivalence of the device to a legally marketed contact lens care product (predicate device). Information on the battery of preclinical testing that may demonstrate substantial equivalence is included in the guidance. If the results of preclinical testing demonstrate that the device will have new characteristics, clinical performance data may be needed to establish substantial equivalence. If clinical performance data are needed, the guidance document provides suggested methodologies (e.g., size and scope of the study) to be included in the investigational protocol.

The draft guidance also outlines the types of manufacturing and chemistry, toxicology, and microbiology testing that should be completed for each device, and a summary of the basic requirements and suggested methods for meeting these preclinical requirements. Other elements of the draft guidance include: (1) General information on the regulations and requirements for labeling contact lens care products; (2) information about 510(k) requirements relating to modifying a marketed contact lens care product; and (3) guidance for submitting a 510(k) for contact lens cases and contact lens accessories (i.e., mechanical cleaning aids and accessory cleaning pads).

In the event that clinical trials are necessary, FDA emphasizes that manufacturers must conduct the trials in accordance with the investigational device exemption regulations in 21 CFR part 812. At this time, FDA considers clinical studies of most contact lens care products to be nonsignificant risk investigations. For nonsignificant risk investigations, approval of an institutional review board (IRB) is necessary before initiating a clinical study, and an investigational plan and informed consent document must be presented to an IRB for review and approval. Prior FDA approval is not required. However, FDA considers most clinical studies of solutions that contain new active ingredients for ophthalmic use and are intended for use directly in the eye to be significant risk investigations that would require both IRB and FDA review and approval.

This draft guidance will be discussed at a future meeting of the Ophthalmic Devices Panel of the Medical Devices Advisory Committee. The date, time, and place of this meeting will be announced in a future issue of the Federal Register.

III. Significance of a Guidance

In the past, guidances have generally been issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidances to state procedures or standards of general applicability that are not legal requirements, but that are acceptable to FDA. The agency is now in the process of revising § 10.90(b). Therefore, this draft guidance is not being issued under the authority of § 10.90(b). Although this guidance does not create or confer any rights on any person, and does not operate to bind FDA in any way, it does represent FDA's current thinking on the tests the agency believes necessary to provide reasonable assurance of the safety and effectiveness of transitional contact lens care products.

IV. Requests for Comments

Interested persons may, on or before May 31, 1996, submit to the Dockets Management Branch (address above) written comments regarding the draft guidance. 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. Received comments will be considered in determining whether to amend the current draft guidance.

Dated: March 18, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–7834 Filed 3–29–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3917–N–57]

Office of Administration; Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is April 8, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed ''Application Kit for the Campus of Learners Initiative.'' HUD seeks to implement this by April 4, 1996.

Under the Campus of Learners Initiative, HUD will designate between 15 and 20 Campus of Learner sites. Designations will be awarded to public housing authorities (PHAs) that prepare creative strategic plans to provide residents with education, job training, and employment opportunities involving computer and telecommunications technology through a college campus-style setting.

To appropriately determine which PHAs should be awarded Campus of Learner designations, certain information is necessary. The criteria for designation will be PHAs that (1) Are in partnership with local education agencies, State education agencies, institutions of higher education, telecommunications and other businesses, other private-sector partners, child-care providers, community-based organizations, etc; and (2) demonstrate a comprehensive plan for transforming at-risk communities through living and

learning opportunities in a range of education, technology, academic learning, skills, enhancement, leadership and self-esteem development, employment, and entrepreneurial positions for children, youth and families.

This initiative is designed to transform public housing into safe and livable communities where families undertake training in new telecommunications and computer technology and partake in new telecommunications and computer technology and partake in education opportunities and job training initiatives with local businesses.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) Title of the information collection proposal: Application Kit—Campus of Learners Initiative.

(2) Summary of the collection of information: Each respondent seeking a Campus of Learners designation would be required to submit current information, as listed below as:

1. Fact Sheet—Information about the respondent: name, address, telephone, facsimile number if joint applicant, same information.
2. Abstract—Brief abstract of the program proposed in the application.
3. Strategic Plan—A narrative describing the activities planned the Campus of Learners Education and Training Initiative.
4. List of Partnerships—List of public, private, State and local sources expected to provide support and funding amount (if committed).
5. Form S.F. 424—Application for Federal Assistance.
6. Form S.F. 424A—Budget Information—Non-Construction Programs.
7. HUD 2880—Applicant/Recipient Disclosure/Update Report.
8. S.F. LLL–A—Disclosure of Lobbying Activities.
9. Certification Assurances with applicable Federal requirements.
10. Certification Regarding Drug-Free Workplace Requirements.

(3) Description of the need for the information and its proposed use:

To appropriately determine which PHAs should be awarded Campus of Learner designations, certain information is necessary. The criteria for designation will be PHAs that (1) are in partnership with local education agencies, State education agencies, institutions of higher education, telecommunications and other businesses, other private-sector partners, child-care providers, community-based organizations, etc.; and (2) demonstrate a comprehensive plan for transforming at-risk communities through living and learning opportunities in a range of education, technology, academic learning, skills, enhancement, leadership and self-esteem development, employment, and entrepreneurial positions for children, youth and families.

(4) description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents will be public housing authorities (PHA) and partner organizations. It is unlikely that any individual PHA has the expertise or resources to establish a Campus of Learners Initiative by itself. PHA applicants should plan to establish a partnership, or consortium, that includes telecommunications industry representatives, public housing families, local education agencies, institutions of higher learning, religious organizations, nonprofit community-based organizations, and/or other eligible organizations or private-sector entities.

The estimated number of respondents is 75. The proposed frequency of the response to the collection of information is one-time. The application need only be submitted once.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden

Number of respondents: 75.

Total burden hours (@ 7.5 hour per response): 562.50.

Total Estimated Burden Hours: 562.50.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 25, 1996.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 96–7920 Filed 3–29–96; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for Construction of Park 22, a 32-Acre Commercial Development on RR 2222 in Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Park 22 Joint Venture has applied to the Fish and Wildlife Service for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act. The applicant has been assigned permit number PRT–807192. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia). The proposed take would occur as a result of the construction of a commercial development on RR 2222 in Travis County, Texas.

The Fish and Wildlife Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of whether jeopardy to the species will result from issuance of this permit, or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. The notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before May 1, 1996.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Joseph E. Johnston or Sybil Vosler, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection during normal business hours (8:00 to 4:30), U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCPs should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas (see address above). Please refer to permit number PRT–807192 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Joseph E. Johnston or Sybil Vosler at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Park 22 Joint Venture plans to construct a commercial development in Travis County, Texas. This action will eliminate less than 12 acres of golden-cheeked warbler habitat and indirectly impacts less than 22 additional acres of habitat. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by purchasing approximately 45 acres of golden-cheeked warbler habitat located within the same watershed or adjacent habitat in Travis County, through an accepted conservation entity and providing for the maintenance of the acquired habitat.

Alternatives to this action were rejected because selling or not developing the subject property with Federally-listed species present was not economically feasible.

Nancy M. Kaufman,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 96–7630 Filed 3–29–96; 8:45 am]

BILLING CODE 4510–55–P

Bureau of Land Management

[NV–030–96–1220–00]

Temporary Closure of Public Lands: Nevada, Carson City District

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of certain public lands in Lyon and Storey Counties on and adjacent to two Off Highway Vehicle race courses:

May 11–12, 1996: Virginia City Grand Prix—Permit Number NV–030–96–06.

May 26, 1996: Yerington 300 Desert Race—Permit Number NV–030–96–10.

SUMMARY: The Walker Resource Area Manager announces the temporary closure of selected lands under his administration. This action is being taken to provide for public safety and to protect adjacent resources.

EFFECTIVE DATES: May 11, 12 & 26, 1996.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: A map of the closures may be obtained at the contact address. The event permittees are required to clearly mark and monitor the event route during the closure periods. Spectators and support vehicles may drive on existing accessory roads only. Spectators may observe the races from safe locations as directed by event officials and BLM personnel. Specific information pertaining to each event is as follows:

1. Western States Racing Association—Virginia City Grand Prix Motorcycle Race—Permit Number NV–030–96–06. This event is a multiple-lap motorcycle race on dirt roads and trails near Virginia City, Nevada in Storey County within T16N 21E and T17N R21E. Bureau lands to be closed to public use include the width and length of those roads and trails identified with colorful flagging and paper arrows attached to wooden stakes designating the race route on the ground. Camping on public lands within the vicinity of and in conjunction with the race shall be prohibited. This closure will be in effect from 6:00 a.m. on May 11 through 4:00 p.m. on May 12, 1996.

2. Valley Off-Road Racing Association Yerington 300 Desert Race—Permit Number NV–030–96–10. A multiple-lap OHV race on roads and washes near Yerington, Nevada in Lyon County, within T12N R24E; T13N R24E; T14N R24E; T15N R24E; T16N R24E; T13N R25E; T15N R25E; T16N R25E; T17N R26E. Bureau Lands to be closed to public use include the width and length of those roads and washes identified with colorful flagging and paper arrows attached to wooden stakes designating the race course on the ground. Designated spectator areas include: the Start/Finish gravel pit; points along Gallagher Pass and Churchill Canyon Roads. This closure will be in effect from 6:00 a.m. until midnight on May 26, 1996.

The above restrictions do not apply to race officials, law enforcement and agency personnel monitoring the event.

Authority: 43 CFR 8364 and 43 CFR 8372.

Penalty: Any person failing to comply with the closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: March 20, 1996.

John Matthiessen,

Walker Resource Area Manager.

[FR Doc. 96–7792 Filed 3–29–96; 8:45 am]

BILLING CODE 4310–HC–M

[WY–040–1430–01; W–122360]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Sublette County, Wyoming has been examined and found suitable for classification for conveyance to Sublette and Teton Counties, under the provisions of the Recreation and Public Purposes Act (as amended 43 U.S.C. 869 *et seq.*). Sublette County and Teton County propose to use the land for a landfill.

Sixth Principal Meridian

T. 30 N., R. 111 W.,

Sec. 22, W½NE¼, NE¼SW¼, NW¼SE¼.

These lands contain 160 acres.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purpose Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming, or by calling Grace Jensen, Realty Specialist, at (307) 367–4358.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purpose Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed

conveyance or classification of the lands to the Area Manager, Bureau of Land Management, Pinedale Resource Area, P.O. Box 768, Pinedale, Wyoming 82941.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a landfill. Any adverse comments will be reviewed by the Rock Springs District Manager. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

Dated: March 14, 1996.

David E. Harper,

Realty Specialist.

[FR Doc. 96–7848 Filed 3–29–96; 8:45 am]

BILLING CODE 4310–22–M

[NV–030–96–1610–00]

Intent To Prepare a Planning Amendment to the Lahontan Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a plan amendment and environmental analysis and invitation for public participation.

SUMMARY: The Carson City District of the Bureau of Land Management proposes to amend the Lahontan Resource Management Plan to address management of public lands in the Pah Rah Range. The recent acquisition of 8,136 acres of private land created a solid block of over 26,000 acres of public land. The Lahontan Resource Management Plan (1985) does not address the recently acquired land and does not include management options available for consolidated public land ownership in this area. The resource management plan amendment process will serve as the basis for decisions on resource protection and development. The Bureau of Land Management and Washoe County are cooperating in the preparation of this resource management plan amendment.

DATES AND ADDRESSES: Written comments on the proposed amendment and environmental analysis are welcomed until May 10, 1996. Comments should be sent to James M. Phillips, Lahontan Resource Area Manager, U.S. Bureau of Land Management, 1535 Hot Springs Road, Ste. 300, Carson City, NV 89706. Public open houses to discuss the amendment will be held by Washoe County and the Bureau of Land Management at the following locations and dates:

(1) April 4, 1996; Natchez Elementary School, Wadsworth, NV; 6:00 p.m.–8:00 p.m.

(2) April 8, 1996; Palomino Valley Volunteer Fire Station, Sparks, NV; 5:00 p.m.–7:30 p.m.

Additional meetings may be scheduled in response to requests from the public. Please call Jo Ann Hufnagle at 702 885–6100 for further information.

SUPPLEMENTARY INFORMATION: The public is invited to participate in the identification of issues related to the management of public lands within the Pah Rah Plan Area located generally to the west of the Pyramid Lake Indian Reservation, east of the Pyramid Highway (State Route 445) and north of Interstate 80. Anticipated issues for the plan amendment are:

- livestock grazing
- wilderness designation
- recreational opportunities
- cultural/historic site protection
- riparian and watershed protection measures
- mining activities
- public safety
- public access

Planning documents and other pertinent materials may be examined at the Bureau of Land Management office in Carson City between 7:30 a.m. and 5:00 p.m., Monday through Friday.

Dated: March 22, 1996.

Kelly M. Madigan,

Acting District Manager.

[FR Doc. 96–7793 Filed 3–29–96; 8:45 am]

BILLING CODE 4310–HC–P 3

National Park Service

60-Day Notice of Intention To Request Clearance of Information Collection, Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 3507) and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on a proposed information collection request (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology.

The Primary Purpose of the Proposed ICR: To identify characteristics, use patterns, perceptions and preferences of visitors within Big Cypress National Preserve, Florida. Results will be used by managers and planners in an effort to develop an Off-Road Vehicle Management Plan.

DATES: Public comments will be accepted for sixty days from the date listed at the top of this page in the Federal Register.

ADDRESSES: Send comments to Jeffrey L. Marion, Ph.D., Unit Leader, Cooperative Park Studies Unit, Department of Forestry, Virginia Tech, Blacksburg, VA 24061–0324.

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. Copies of the proposed ICR requirement can be obtained from Jeffrey L. Marion, Ph.D., Unit Leader, Cooperative Park Studies Unit, Department of Forestry, Virginia Tech, Blacksburg, VA 24061–0324.

FOR FURTHER INFORMATION CONTACT: Jeff Marion, 540–231–6603.

SUPPLEMENTARY INFORMATION:

Title: Amount and Distribution of Off-Road Vehicle Use.

Form: None.

OMB Number:

Expiration date:

Type of request: Visitor use survey.

Description of need: Park planning and management.

Description of respondents: Individuals who use off-road vehicles in Big Cypress National Preserve.

Estimated annual reporting burden: 175 burden hours.

Estimated average burden hours per response: 10 minutes.

Estimated average number of respondents: 1,500.

Estimated frequency of response: Once.

Title: Off-Road Vehicle Visitor Use Study.

Form: none.

OMB Number:

Expiration date:

Type of request: Visitor use survey.

Description of need: Park planning and management.

Description of respondents: Indivduals who use off-road vehicles in Big Cypress National Preserve.

Estimated annual reporting burden: 188 burden hours.

Estimated average burden hours per response: 20 minutes.

Estimated average number of respondents: 750.

Title: Visitor Use Study.

Form: none.

OMB Number:

Expiration date:

Type of request: Visitor use survey.

Description of need: Park planning and management.

Description of respondents: Individuals who visit Big Cypress National Preserve.

Estimated annual reporting burden: 94 burden hours.

Estimated average burden hours per response: 15 minutes.

Estimated average number of respondents: 500.

Dated: March 11, 1996.

Terry N. Tesar,

Information Collection Clearance Officer, Audit and Accountability Team Office, National Park Service, 202–523–5092.

[FR Doc. 96–7879 Filed 3–29–96; 8:45 am]

BILLING CODE 4310–70–M

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Department of the Interior

ACTION: Notice

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on June 9, 10, and 11 in Billings, MT.

The Committee will meet at the Clarion Hotel, 1223 Mullowney Lane, Billings, MT 59101, telephone (406) 248–7151. Meetings will begin each day at 8:30 a.m. and conclude not later than 5:00 p.m.

The Native American Graves Protection and Repatriation Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute.

On the agenda for this meeting will be comments to the Committee's draft recommendations regarding the disposition of culturally unidentifiable human remains in museums and Federal collections. The Committee with also hear public comment and discuss the application of the statute in Montana.

Culturally unidentifiable human remains are those in museum or Federal agency collections for which, following the completion of inventories by November 16, 1995, no lineal descendants or culturally affiliated Indian tribe has been determined.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeology & Ethnography Program (MS2275), National Park Service, P.O. Box 37127 Washington, D.C. 20013–7127, Washington D.C. 20002, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, Suite 210, 800 North Capital Street, Washington, D.C.

Dated: March 26, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology & Ethnography Program

[FR Doc. 96–7817 Filed 3–29–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Mohave County, AZ, in the Control of the Arizona State Office, Bureau of Land Management, Phoenix, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003(d), of the completion of an inventory of human remains and associated funerary objects in the control of the Arizona State Office, Bureau of Land Management, Phoenix, AZ.

A detailed inventory and assessment of the human remains and associated funerary objects has been made by the Museum of Northern Arizona professional staff, Southern Utah University Archeology Museum professional staff, and Bureau of Land Management officials in consultation with the Hopi Tribe and Kaibab Band of the Paiute Indians of the Kaibab Indian Reservation.

In 1974 and 1988, human remains representing three individuals were recovered during legally authorized salvage excavations from the Reservoir Site (NA 13257), a precontact habitation site. No known individuals were identified. Six associated funerary objects include bone fragments of one animal, four ceramic vessels, and azurite pigment.

In 1989, human remains representing two individuals were recovered during legally authorized salvage excavations from Site AZ B:1:102 (BLM), a precontact habitation site. No known individuals were identified. The ten associated funerary objects consist of ceramic vessels.

Based on context of the sites and the associated funerary objects, these burials date to the Late Basketmaker III through the Pueblo II periods (700–1150 AD). Historical documents and ethnographic sources indicate Paiute people have occupied this area since precontact times. Kaibab-Paiute oral tradition supports this evidence, and the Kaibab Band's reservation is now located within eight miles of the recovery sites. Oral tradition evidence presented by representatives of the Hopi Tribe indicates cultural affiliation with Basketmaker and Puebloan sites in this area. Archeological evidence supports this affiliation.

Based on the above mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10(d)(1), the human remains listed above represent the physical remains of five individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that the sixteen cultural items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects and the Hopi Tribe and the Kaibab Band of the

Paiute Indians of the Kaibab Indian Reservation.

This notice has been sent to officials of the Hopi Tribe and the Kaibab Band of the Paiute Indians of the Kaibab Indian Reservation. Representatives of any other Indian tribe which believes itself to be culturally affiliation with these human remains and associated funerary objects should contact Gary Stumpf, Bureau of Land Management, Arizona State Office, 3707 N. 7th Street, Phoenix, AZ 85014, telephone (602) 650–0509 before May 1, 1996. Repatriation of these human remains and associated funerary objects may begin after this date if no additional claimants come forward.

Dated: March 26, 1996

Francis P. McManamon

Departmental Consulting Archeologist

Chief, Archeology & Ethnography Program

[FR Doc. 96–7816 Filed 3–29–96; 8:45 am]

BILLING CODE 4310–70–F

AGENCY FOR INTERNATIONAL DEVELOPMENT

Title II Development Activity Proposal and Previously Approved Activity Submissions; Final Draft Guidelines Availability

Pursuant to the Agricultural Trade and Development Act of 1990, notice is hereby given that the Final Draft Guidelines for Fiscal Year 1997 (FY 97) Public Law 480 Title II Development Activity Proposal (DAP) and Previously Approved Activity (PAA) Submissions are available to interested parties for the required thirty (30) day comment period. An earlier version of these guidelines was announced in the Federal Register on December 26, 1995. Due to the number of revisions to Section I, they have been resubmitted for the legislatively—mandated thirty (30) day comment period. It is anticipated that the guidelines will not undergo further changes.

Individuals who wish to review and comment on the final draft guidelines should contact: Office of Food for Peace, Room 323, SA–8, Agency for International Development, Washington, D.C. 20523. Contact person: Adrienne Benson of Mendez England and Associates , (703) 841–2700.

The thirty day comment period will begin on the date that this announcement is published in the Federal Register.

Dated: March 19, 1996.

H. Robert Kramer,

Director, Office of Food for Peace, Bureau for Humanitarian Response.

[FR Doc. 96–7790 Filed 3–29–96; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #147I]

Controlled Substances: 1996 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim notice establishing 1996 aggregate production quotas and request for comments.

SUMMARY: This interim notice establishes revised 1996 aggregate production quotas for amobarbital and hydromorphone, Schedule II controlled substances, as required under the Controlled Substances Act of 1970.

DATES: The is effective on April 1, 1996. Comments must be submitted on or before May 1, 1996.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to § 0.14 of Tile 28 of the Code of Federal Regulations.

The DEA established initial 1996 aggregate production quotas for controlled substances in Schedules I and II, including amobarbital and hydromorphone, in a Federal Register notice published on November 21, 1995 (60 FR 57808). Since publication of the initial 1996 aggregate production quotas, DEA has received information which necessities an immediate increase in the initial 1996 aggregate production quotas for amobarbital and hydromorphone. The company which is currently the only bulk manufacturer of amobarbital, did not request a 1996 individual manufacturing quota for amobarbital. Since the company now needs to manufacture amobarbital to meet unexpected customer demands, the established initial 1996 aggregate production quota for amobarbital must be increased so that they may receive an individual manufacturing quota. The increase proposed for hydromorphone is necessary for a company to meet its customers' product development activities. For these reasons, an interim notice is being published.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby establishes the following revised 1996 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous base or acid:

Basic class	Established revised 1996 quota
Amobarbital	301,000
Hydromorphone	718,000

All interested persons are invited to submit their comments in writing regarding this interim notice.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interest must be considered under the Regulary Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined

that this action does not require a regulatory flexibility analysis.

Dated: March 22, 1996.

Stephen H. Green,

Deputy Administrator.

[FR Doc. 96–7797 Filed 3–29–96; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–035]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: April 18, 1996, 8:30 a.m. to 5:30 p.m.; and April 19, 1996, 8:30 a.m. to Noon.

ADDRESSES: NASA Headquarters, Room MIC 7A, 300 E Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Arnauld Nicogossian, Code U, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0215.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, April 18, 1996, from 4:30 p.m. to 5:30 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of the Office of Life and Microgravity Sciences and Applications Status
—Committee Discussion on Strategy and Metrics
—International Space Station Status, Phase 1
—Advisory Committee Structure
—Subcommittee Reports
—Discussion of Committee Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be required to sign a visitor's register.

Dated: March 26, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–7820 Filed 3–29–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Washington Public Power Supply System; WPPSS Nuclear Project No. 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the technical specifications (TSs) for Facility Operating License No. NPF–21, issued to Washington Public Power Supply System (the Supply System, or the licensee) for operation of the WPPSS Nuclear Project No. 2, located in Benton County, Washington.

Environmental Assessment

Identification of the Proposed Action

The proposed change would modify the TSs to reflect replacement of the existing reactor recirculation (RRC) flow control system with an adjustable speed drive (ASD) system. The current system relies on operation of the RRC pumps at two discrete speeds, using flow control valves to vary the flow in the RRC system. Following the design change, the flow control valves and the existing pump controllers would be deactivated in place. The existing analog-hydraulic flow control system will be replaced with dual channel, variable frequency ASDs and a digital recirculation flow control system that would vary RRC flow by varying RRC pump speed. The proposed TS changes would reflect the new RRC flow control system.

The Need for the Proposed Action

The licensee proposed the action to improve the reliability of flow control in the RRC system, and to provide increased operational flexibility during plant startup to avoid RRC pump cavitation and core instability restriction zones.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action. The proposed change would not affect the probability of loss of the RRC pumps. Blocking open the RRC flow control valves would remove the potential failure of these valves from affecting operation of the RRC system, thereby reducing the probability of loss of RRC flow from this failure. The proposed change would allow removal of the hydraulic components for the RRC flow control valves and allow the licensee to cap eight containment penetrations. This in turn would allow removal of the 16 associated containment isolation valves. This reduces the number of potential leakage paths from the containment, and removes these potential leakage paths from affecting the consequences of postulated accidents. The proposed change also does not affect the types of any effluents that may be released offsite, and there is no increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. The proposed action does not affect systems that generate or process non-radiological plant effluents, and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greated impact need not be evaluated. As an alternative to the proposed action, the Commission considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The proposed action does not involve the use of any resources not previously considered in the Final Environnmental Statement for WNP–2.

Agencies and Persons Consulted

In accordance with its stated policy, on February 27, 1996, the Commission consulted with the Washington State official, Mr. R.R. Cowley of the Department of Health, State of

Washington Energy Facility Site Evaluation Council, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 26, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 26th day of March 1996.

For the Nuclear Regulatory Commission.

James W. Clifford,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–7836 Filed 3–29–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activity Under OMB Review

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), this notice requests comment on the following two proposed information collections contained in the proposed revision to Office of Management and Budget (OMB) Circular A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions,'' published on March 17, 1995, for comment within 60 days, i.e., by May 16, 1995 (60 FR 14594).

The information collection request involves two types of entities: (1) Reports from auditors concerning their audit findings to auditees and (2) reports from auditees to the Federal Government concerning these audit reports. Circular A–133 specifies what auditors are required to report to auditees, including under Sections 13.c., Auditor's Reporting under Financial Statements and Auditor's Reporting and 18.b.(4), Program Audit Guide Not Available under Program-Specific Audit (these sections are being renumbered in the pending final revision as § ____.505 and § ____.235(b)(4), respectively). Circular A–133 also specifies what auditees are required to report to the central clearinghouse designated by OMB, including the ''Information Accompanying Certificate of Audit,'' enumerated in Sections 16.b., Certification under Report Submission and 18.c., Reporting for Program-Specific Audits under Program-Specific Audit (these sections are being renumbered in the pending final revision as § ____.320 and § ____.235(c), respectively). OMB anticipates that there will be both a long form and short form for auditees to report these data elements, depending on the characteristics of the auditee and the amount and number of Federal awards expended by the auditee.

OMB estimates that reporting by auditors currently takes 10 hours and will take 12 hours under the proposal. Further, OMB estimates that reporting by auditees currently takes 16 hours on the average and will take 20 hours under the proposal.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposal, contact Sheila Conley, Office of Federal Financial Management, OMB (telephone: 202–395–3070).

ADDRESSES: Written comments should be sent by May 31, 1996 to: Sheila Conley, Office of Federal Financial Management, OMB, Room 6025 New Executive Office Building, Washington, DC 20503.

John B. Arthur,

Associate Director for Administration.

[FR Doc. 96–7871 Filed 3–29–96; 8:45 am]

BILLING CODE 3110–01–P

Information Collection Activity Under OMB Review

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), this notice announces that an information collection request was submitted to the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs for review. On January 19, 1996, OMB published both interim final amendments to OMB's governmentwide guidance on lobbying with a request for comments within 60 days, i.e., by March 19, 1996 (61 FR 1412), and a notice of information collection activity under OMB review for emergency processing under 5 CFR 1320.13 (61 FR 1413). To date, only nonsubstantive comments have been received.

The information collection request is for amendments to the Standard Form (SF)–LLL, Disclosure of Lobbying Activities, as necessitated by the ''Lobbying Disclosure Act of 1995, which became law on December 19, 1995,'' and which was effective January 1, 1996. This early effective date necessitated a request for emergency processing. The SF–LLL is the standard disclosure reporting form for lobbying paid for with non-Federal funds, as required by OMB's governmentwide guidance for new restrictions on lobbying, which was issued under 31 U.S.C. 1352 (popularly know as the ''Byrd Amendment''). The new lobbying statute simplified the information required to be disclosed under 31 U.S.C. 1352.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposal, contact Barbara F. Kahlow, Office of Federal Financial Management, OMB (telephone: 202–395–3053).

ADDRESSES: Written comments should be sent by May 1, 1996, to: Barbara F. Kahlow, Office of Federal Financial Management, OMB, Room 6025 New Executive Office Building, Washington, DC 20503 and Edward Springer, OMB Desk Officer, Office of Information and Regulatory Affairs, OMB, Room 10236 New Executive Office Building, Washington, DC 20503.

John B. Arthur,

Associate Director for Administration.

[FR Doc. 96–7870 Filed 3–29–96; 8:45 am]

BILLING CODE 3110–01–P

Performance of Commercial Activities, OMB Circular No. A–76

AGENCY: Office of Management and Budget, Executive Office of The President.

ACTION: Notice of Transmittal Memorandum No. 15, to the OMB Circular No. A–76, ''Performance of Commercial Activities,'' ''*Revised Supplemental Handbook*.''

SUMMARY: The Office of Management and Budget (OMB) publishes its revisions to the Supplemental Handbook issued as a part of its August 4, 1983, OMB Circular No. A–76, ''Performance of Commercial Activities.'' Circular No. A–76 was

originally published in the August 16, 1983, Federal Register, at pages 37110–37116.

The Revised Supplemental Handbook seeks the most cost-effective means of obtaining commercial support services and provides new administrative flexibility in the Government's make or buy decision process. The revision modifies and, in some cases, eliminates cost comparison requirements for recurring commercial activities and the establishment of new or expanded interservice support agreements; reduces reporting and other administrative burdens; provides for enhanced employee participation; eases transition requirements to facilitate employee placement; maintains a level playing field for cost comparisons between Federal, interservice support agreement and private sector offers, and seeks to improve accountability and oversight to ensure that the most cost effective decision is implemented. The proposed revision improves upon existing guidance by clarifying provisions that may have made the cost comparison process unnecessarily difficult or lead to less than optimal outcomes.

DATES: The provisions of the Revised Supplemental Handbook are effective March 27, 1996 and shall apply to all cost comparisons in progress that have not yet undergone bid opening or where the in-house bid has not yet otherwise been revealed.

AVAILABILITY: Copies of the Revised Supplemental Handbook may be obtained by contacting The Executive Office of the President, Office of Administration, Publications Office, Washington, DC 20503, at (202) 395–7332. This document is also accessible on the OMB Home Page. The on-line OMB Home Page address (URL) is http://www.whitehouse.gov/WH/EOP/omb

FOR FURTHER INFORMATION CONTACT: The Budget Analysis and Systems Division, NEOB Room 6104, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Telephone Number: (202) 395–6104, Fax Number (202) 395–7230.

SUPPLEMENTARY INFORMATION: OMB received 26 comments in response to its request for comments on proposed revisions to the Supplemental Handbook, published in the October 23, 1995, Federal Register, page 54394: fifteen from Federal agencies; ten from industry or trade groups and one from an employee organization. A summary of the substantive agency and public comments and changes made to the Supplemental Handbook is attached.

Alice M. Rivlin,

Director.

Attachment—Summary of Agency and Public Comments and Changes Made to the OMB Circular A–76 Supplemental Handbook

Introduction

1. Americans want to ''get their money's worth'' and want a Government that is more businesslike and better managed. The reinvention of Government begins by focusing on core mission competencies and service requirements. Managers must begin by asking some fundamental questions, like: why are we in this business; has industry changed so that our involvement or level of involvement is no longer required; is our approach cost effective and, finally, assuming the Government has a legitimate continuing role to play, what is the proper mix of in-house, contract and interservice support agreement resources.

2. The OMB Circular A–76 Revised Supplemental Handbook is designed to enhance Federal performance through competition and choice. It seeks the most cost effective means of obtaining commercial products and support services and provides new administrative flexibility in the Government's make or buy decision process. The revisions modify and in some cases eliminate cost comparison requirements for recurring commercial and interservice support agreement services; reduce reporting and other administrative burdens; provide for enhanced employee participation; ease transition requirements; provide a level playing field, while recognizing the differences between Government and private sector accounting and performance measurement systems, and seek to improve accountability and oversight to ensure that the most cost effective decision is, in fact, implemented.

3. The purpose of Circular A–76 is not to convert work to or from in-house, contract or interservice support agreement performance. Rather, it is designed to: (1) Balance the interests of the parties involved, (2) provide a level playing field between public and private sector offerors, and (3) encourage competition and choice in the management and performance of recurring commercial activities. In establishing common ground rules for public-public and public-private competitions, the Revised Supplement protects the procurement process, establishes a common baseline for cost and quality assessments, creates certain ''good employer'' relationships for affected Federal and contract employees and determines competitively who is best prepared to do the work. It is designed to empower Federal managers to make sound business decisions related to the provision of recurring product or support service requirements.

Summary of Comments and Changes

1. Inherently Governmental Functions

Inherently governmental functions, as defined in the Office of Federal Procurement Policy (OFPP) Policy Letter 92–1, ''Inherently Governmental Functions'' (Federal Register, September 30, 1992, page 45096 and the Federal Register, January 26, 1996, page 2627 implementing the Policy Letter through the Federal Acquisition Regulations at Sections 7.103, 7.105 and 7.500) are not subject to performance by contract. Therefore, management decisions that involve the transfer of inherently governmental work between agencies, including interservice support agreements (ISSAs), are not subject to the Circular or the Revised Supplemental Handbook. Likewise, decisions involving business management practices, the development of joint ventures, asset sales, the devolution of activities to State and local governments, the termination of obsolete services or the decision to exit an entire business line are not subject to the cost comparison requirements of the Circular.

Agency and Public Comments: Several commenters suggested that individual functions should be defined as either inherently governmental or commercial. One commenter suggested that the revision modifies the definition of what is inherently governmental by including exemptions for certain activities from the cost comparison requirements of the Circular. Although the draft proposed to update and expand the list of commercial activities attached to the August 1983 Circular A–76, the listing remains unchanged. OMB is not considering revisions to the Circular itself nor is OMB revising OFPP Policy Letter 92–1. The Circular's listing of commercial activities is illustrative. It is not meant to be all-encompassing. Activities at a greater or lesser degree of specificity may be considered commercial activities. Questions regarding whether a function is or is not commercial or inherently governmental may be forwarded to OMB for review.

The Supplement clarifies that certain commercial activities are exempt from the cost comparison requirements of the

Circular and may be converted to or from in-house, contract or interservice support agreements without cost comparison, for reasons other than cost. Inherently governmental activities are not commercial in nature, are not subject to the Circular and cannot be converted to contract performance.

2. Reliance on the Private Sector

The Revised Supplement delegates to agency management additional authority to determine the proper mix of in-house, contract and interservice support agreement resources. While the Revision retains the 1983 Supplement's requirements to contract new or expanded work, unless a cost comparison is conducted to support conversion to in-house or interservice support agreement performance, it also requires conversion to contract only when it is cost effective. The decision to conduct a cost comparison is itself within the agency's discretion.

Agency and Public Comments: Industry and trade group commenters, generally, sought a ''reinvigorated'' policy statement of strict reliance on the private sector. In their view, the Revision should require or, at a minimum, permit the direct conversion of all commercial activities to contract performance, without cost comparison. Objections were made to the proposal to permit agencies to continue their existing interservice support agreements for commercial activities, without cost comparison.

OMB is not, at this time, considering changes to the Circular A–76 itself. The Circular requires reliance on the private sector when shown to be economically justified. It does not require the conversion of in-house work to contract, as a matter of policy, unless a cost comparison, conducted in accordance with its Supplement, demonstrates it to be in the best interests of the taxpayer.

3. Exemptions From Cost Comparison

The Circular itself exempts certain recurring commercial activities from cost comparison, including: Mobilization requirements within the Department of Defense, the conduct of research and development (R&D), and direct patient care activities in Government hospitals or other health facilities.

The Revision clarifies this policy to permit activities that are exempt from cost comparison requirements of the Circular to be retained in-house or converted to or from in-house, contract or interservice support agreement performance, without cost comparison. The list of functions exempted from cost comparison is expanded to include: national security activities, mission critical core activities, and temporary emergency requirements.

Agency and Public Comments: There was a general level of agreement among all commenters that the addition of these functions to the list of those exempt from cost comparison was needed and appropriate. Several commenters took exception to the proposed 10 percent of total FTE limit for ''core activities.'' The Revision removes this limitation and, thereby, provides a significantly expanded level of administrative flexibility to identify functions as ''core'' and exempt them from cost comparison. In place of the 10 percent core limit, one commenter requested the right to appeal agency determinations of their core requirements and decision to convert from in-house to contract performance on the basis of a core designation. This change has not been made. The determination of a ''core'' function is, fundamentally, a management decision.

4. Annual Inventory and Reporting Requirements

The revision eliminates required study schedules and quarterly study status reporting, as unnecessary and administratively burdensome. Agencies are, however, required to maintain an inventory of commercial activities with information on completed cost comparisons.

Agency and Public Comments: There was general agreement that the existing OMB inventory and reporting system was unnecessary and administratively burdensome. In accordance with one commenter's suggestion, all inventory requirements are now identified in Appendix 3. These requirements are consistent with the Department of Defense Commercial Activity Inventory and Reporting System, to permit Government wide aggregations of data by function and reason code. At their discretion, civilian agencies should be able to duplicate the DOD inventory and reporting system without significant time or expense.

5. Waivers

The 1983 Supplement permitted agencies to issue cost comparison waivers, if effective price competition is available and a determination is made that an in-house Most Efficient Organization (MEO) has no reasonable chance of winning a competition with the private sector. Agencies were not permitted to waive cost comparison requirements to convert from contract to in-house performance and there is no mention of waivers with respect to interservice support agreement competitions.

The Revision broadens an agency's authority to waive cost comparisons to convert to or from in-house, contract or interservice support agreement, without cost comparison, if it is found that: (1) The conversion will result in a significant financial or service quality improvement and that the conversion will not serve to reduce significantly the level or quality of competition in the future award or performance of work or (2) there is a finding that the in-house or contract (in the case of a possible conversion from contract to in-house performance) offers have no reasonable expectation of winning a competition. In general, if an agency undertakes a major independently conducted business analysis and determines that significant savings—in excess of the minimum differential—can be achieved by conversion or, if significant performance improvements are likely, beyond what could be reasonably expected from a reorganization of the current approach, the agency may be justified in waiving the A–76 cost comparison. The Revision clarifies that agency waivers, with supporting documentation, are subject to public review and the A–76 administrative appeal process. Finally, the Revision also formalizes OMB's waiver guidance on DOD Base Closures and expands it to include commercial activities at civilian agency locations that have announced a date-certain closure.

Agency and Public Comments: There was a general level of agreement among all commenters that the authority to issue waivers needed to be broadened to include the conversion of work to or from in-house, contract or interservice support agreement. There was also a general level of agreement that the waiver requirements of the 1983 Supplement were too narrow—only one waiver having been issued in over 12 years. Concern was expressed, however, for the organizational level authorized to issue such waivers. Originally, the comment draft limited the waiver decision to the Secretary. In response to a number of comments, the authority to issue a cost comparison waiver may now be delegated to the Assistant Secretary level. Within DOD, this authority may be further delegated to the Assistant Service Secretaries. This delegation facilitates the appeal of waiver decisions, which has also been clarified in the Revision over the comment draft.

6. Employee Participation

The Revision provides additional guidance regarding the development of

the Performance Work Statement, in-house management plan and cost estimate. The Revision encourages agencies to consult with employees and involve them at the earliest possible stages of the competition process, subject to the restrictions of the procurement process and conflict of interest statutes. Agencies are requested to afford employees and private sector interests an opportunity to comment on solicitations prior to the opening of bids. This will ensure that the solicitation is complete and that all parties are treated fairly. The Revision also affords additional time to interested parties to submit cost comparison appeals.

Agency and Public Comments: There was very little comment or disagreement on this issue. One commenter felt that it was particularly important that the Revision clarify employee participation opportunities. The 1983 Supplement was silent on this issue.

7. Performance Standards

The 1983 Supplement did not permit conversion decisions to be based upon the comparison of performance measures or standards. The Revision authorizes conversion to or from in-house, contract or interservice support agreement performance, if an agency determines that performance meets or exceeds generally recognized performance and cost standards. Performance standard-based competitions must reflect the agency's fully allocated costs of performance and must be certified as being in full compliance with the *Managerial Cost Accounting Concepts and Standards for the Federal Government,* Statement of Recommended Accounting Standards Number 4, or subsequent guidance. The cost comparability procedures described in the Revision, such as those related to fringe benefit factors, will also be used in assessing performance against these standards.

Agency and Public Comments: There was very little comment or disagreement on this issue, although one commenter suggested that the use of existing manuals to establish performance standards for Federal employees is too new an idea. Performance measures and cost standards are becoming more widely used to assess performance in government and in the private sector. Indeed their development is required by the Government Performance Results Act (GPRA). As noted by several commenters, the difficulty lies in assuring that historical performance measures are accurate and comparable. The Revision establishes required levels of oversight and certification to ensure that a high degree of comparability is reached. The question was raised whether performance standard-based cost comparisons could be used in interservice support agreement comparisons. The Revision clarifies the paragraph to note that the answer is yes, but only when those standards are consistent with the comparative costing rules of the Revision. This may require some detailed analysis of industry standards and adjustments to internal agency performance measures.

8. Conversions With Federal Employee Placement

The Revision authorizes the conversion of functions involving 11 or more FTE to contract performance, without cost comparison, if fair and reasonable prices can be obtained from qualified commercial sources *and* all directly affected Federal employees serving on permanent appointments are reassigned to other comparable Federal positions for which they are qualified.

Agency and Public Comments: There was strong support and strong opposition to this provision. One commenter suggested that no conversions should be authorized without a cost comparison—even if all Federal employees are placed in other comparable Federal positions. It was suggested that this new administrative flexibility denies taxpayers the benefits of a cost comparison and fails to accommodate public employee interests. Short of eliminating this provision, OMB was asked to assure the right to appeal such decisions and that placement be limited to the commuting area. In contrast, another commenter objected to the idea that failure to place a single employee could require a cost comparison or otherwise delay a direct conversion to contract.

The provision has been modified to clarify that in addition to assuring placement in ''comparable Federal positions,'' the conversion to contract with placement and without cost comparison is limited to competitive awards. These direct conversions to contract must retain the benefits of full and open competition. In the absence of adverse actions to Federal employees and similar to the policy of reliance on the private sector for new starts and expansions, Federal managers should be permitted to rely on the competitive dynamics of the private sector.

The request to limit Federal employee placements to the commuting area has been rejected. The request is too limiting and not in the long-term best interests of either the Government, who has an interest in redirecting important resources, or individual employees.

The comment draft admonished Federal managers not to modify, reorganize or divide functions for the purpose of circumventing the requirements of the Revised Supplement. One commenter further requested the ability to appeal individual organizational changes. While the Revision expands the appeal process to permit interested parties to appeal not only costing questions, as permitted under the 1983 Supplement, but also general compliance issues, it does not permit appeals of basic organizational decisions. The A–76 appeal process is not a surrogate to resolve management-union complaints.

9. The 10 FTE or Less Rule

The 1983 Supplement's 10 FTE or less rule that permits the conversion of a function to contract performance without cost comparison—even with adverse employee impacts—is extended by the Revision to the conversion of similarly sized activities to in-house or interservice support agreement performance, without cost comparison.

Agency and Public Comments: One commenter suggested that the 10 FTE or less threshold be raised to 50 FTE. This change would permit the conversion of activities to or from in-house, contract or interservice support agreement, without cost comparison and without placement (adverse action would be authorized). This recommendation was not accepted.

The 10 FTE or Less Rule is a recognition that there is a break-even point where the cost of conducting the comparison is not likely to outweigh the expected benefits. The 10 FTE or Less Rule has long been accepted as a reasonable approximation of this point. The Revision does not change this requirement. Based upon agency experience, we believe that cost comparisons at the 11–50 FTE levels do result in significant MEO and competition savings.

10. MEO Implementation

The Revision eliminates the 1983 Supplement's 180-day MEO implementation requirement. The Revision requires agencies to develop a transition plan for each competitive solicitation. This approach should permit agencies to plan for employee placements and facilitate a more orderly transition of work to or from in-house, contract or interservice support agreement.

The Revision permits agencies to assume that current organizational structures and wage grade systems reflect their MEO. A signed certification is required and may be based upon an

number of reinvention initiatives. Certified MEO decisions are not subject to appeal.

Agency and Public Comments: There was very little comment or disagreement on the MEO implementation change. Taken in combination with the Revision's new requirement to conduct Post-MEO Performance Reviews, the provision permits for better employee and workload transition planning.

Several commenters, however, asked for permission to consider existing interservice support agreement reimbursable rates as fully competitive costs, under the Circular, for purposes of comparisons with the private sector. This change has not been made. In general, these rates do not currently reflect the requirements of the CFO Act, GPRA or the FASB, nor do they reflect the fringe benefits, liability, overhead, depreciation, capital, contract administration, or other cost adjustments necessary for a level playing field to exist, such as Federal taxes. They are also often structured to permit the cross-subsidization of one service to another within the agency's revolving fund.

11. Cost Comparison Completion

The 1983 Supplement makes no mention of study completion time frames. However, because functions could not be converted to contract or in-house performance without a cost comparison, there has been an incentive to never complete the cost comparison, if the desired outcome is to maintain the status quo. The Revision requires agencies to report to OMB on any study not completed within 18 months for single function studies and 36 months for multi-function studies and the corrective actions taken.

Agency and Public Comments: Several commenters objected to the suggestion that A–76 cost comparisons (including the development of the PWS and Management Plan) can or should be completed within 18 to 36 months. Other commenters objected that the time frames were too long and did not reflect the 45–90 day average solicitation response times required by most Government service support solicitations.

The required report is to OMB. It is not a requirement to complete a study. However, where a study has not been completed, the agency must explain what the problem is and what the agency is doing to assure that study completion times will be reasonable. The analogy to the private sector's solicitation response requirement is inappropriate, as the Government is also developing historical workload and minimum performance standard data. It is not expected that cost comparisons conducted for possible conversion from contract to in-house performance will require these longer time frames, as the workload and performance measures are, generally, well developed.

12. Post-MEO Performance Reviews

Contracts are regularly inspected for performance and subjected to financial audit. As a matter of accountability, the Revision requires agencies to conduct Post-MEO Performance Reviews on not less than 20 percent of all functions retained or converted to in-house performance as a result of a cost comparison. These reviews will confirm that the MEO was properly estimated and implemented and that work is being performed in accordance with the terms, quality standards and costs specified in the PWS.

Agency and Public Comments: This proposal was found to be insufficient by several commenters, while it was strenuously objected to by several others. One commenter asked that the requirement be eliminated as an additional and unnecessary administrative burden. The name was changed from Post-MEO Performance Audit to Post-MEO Performance Review to assuage concerns over the level of detail required.

OMB is committed to ensuring that the cost comparison process is fair and equitable. A major private sector complaint has been that Government agencies ''buy-in.'' The problem is that the private sector undergoes extensive contract performance inspections, evaluations, and financial audits, while the in-house organization is currently subject to none of these oversight reviews. It was urged that 100 percent of all in-house cost comparison ''wins'' be subjected to Post-MEO Review. There is, however, concern for the administrative burdens being imposed by the Circular. Therefore, the Revision retains a 20 percent requirement.

Several commenters suggested that if the MEO is found to be in default, it should not be allowed to compete under a new solicitation. This recommendation has not been accepted. The Revision calls for the contracting officer to retreat first to the next low offeror, if feasible. If retreat to the next low offeror (contract bid) is not feasible, a new cost comparison is required. In retreating to the next low offeror, a conversion to contract without additional cost comparison is possible.

One commenter suggested that Post-MEO Reviews be announced in the *Commerce Business Daily.* This recommendation has not been accepted because it would be burdensome. To ensure compliance over time, the A–76 inventory and reporting system will require agencies to prepare an annual list of completed cost comparisons retained in-house or by contract and the number of Post-MEO Reviews completed. This listings will be made available to the public upon request.

One commenter asked whether failure to comply with the Transition Plan implementing the MEO would be construed as a default. Changes have been made to clarify that a significant failure to implement the Transition Plan, such that it would invalidate the cost comparison, would be considered a default. Another commenter suggested making the review due one year after implementation of the MEO. The 180-day MEO implementation requirement no longer exists and since the MEO may be implemented via the transition plan establishing a hard date to conduct the review is difficult. It must be completed within the cost comparison period. The time frame for completing Post-MEO Performance Reviews is left to the discretion of the agency, but must be within the contract or cost comparison period.

13. The Streamlined Cost Comparison Alternative

In addition to the generic cost comparison methodology, a streamlined cost comparison process has been developed for activities involving 65 FTE or less. This approach avoids the cost comparison's current reliance on the procurement process, until a final decision to contract has been made. Within the policies and procedures laid out by the Revision, existing contracts can be used to determine competitive private sector costs.

Agency and Public Comments: The streamlined cost comparison methodology was generally accepted and even widely acclaimed. The only real disagreement centered on the size of functions that could be cost compared using the approach, which was established in the comment draft at not more than 50 FTE.

Several commenters asked that the threshold be unlimited or raised significantly. OMB did not expect that either the private sector or the unions would accept an unlimited streamlined approach, as it could be applied to convert to or from in-house, contract or interservice support agreement. One commenter, believing that most A–76 cost comparisons to date have involved less than 50 FTE, suggested that *all* such functions be *required* to use the Streamlined cost comparison approach provided by the draft. This

recommendation was not accepted for the reasons noted above. Under the streamlined approach and as a matter of equity, there is no opportunity for the development of an in-house MEO, nor is there an opportunity for the private sector to sharpen its competitive bid. The process relies on current in-house and contract costs.

One commenter was concerned that contracting officers, as Federal employees, might be inclined to select the more costly comparable contracts, in order to give Federal employees a competitive advantage. To mitigate against this possibility, it was suggested that industry ''input'' in the selection of comparable contracts is necessary. We disagree. We are not prepared to make such an assumption nor is OMB prepared to impose the additional administrative burdens implied by such a process on the agencies. The contracting officer's selection of comparable contracts—adjusted for scope and quality, are not subject to appeal.

Two other important comments were received on this issue. First, there was a request that a policy statement be included that it is the policy of the Government to consolidate mutually supporting functions to the extent possible, to achieve economies of scale. This recommendation has not been accepted, because A–76 is not the place for such a policy determination and should rather be left to agency managers. It was also recommended that the section include a prohibition on breaking functions down to permit the use of the streamlined approach. Like the prohibition against modifications and reorganizations to permit direct conversion to contract, the comment draft has been revised to prohibit agencies from reorganizing specifically to permit the use of a streamlined cost comparison.

14. Sector-Specific Cost Comparison Methodologies

The Revision provides sector-specific cost comparison methodologies for aircraft and aviation services and for motor vehicle fleet management services. Additional sector- specific cost comparison methodologies are expected and interested parties are encouraged to work with OMB on their development.

Agency and Public Comments: While comments were received in response to the two industry cost comparison methodologies outlined in the draft, there were no objections to the concept of sector-specific cost comparisons or their development.

Initially, the General Services Administration (GSA) raised concerns about the proposed cost comparison requirements for comparing interservice support agreement performance of motor vehicle fleet services. GSA was concerned that the requirement might conflict with the GSA Administrator's statutory authorities regarding motor vehicles. After further discussion, OMB and GSA agreed to jointly issue the guidance in Appendix 7 on the conduct of these comparisons. Changes were also made to the aircraft and aviation cost comparison methodology to reflect cost accounting improvements suggested by industry and made through the Interagency Committee for Aviation Policy (ICAP).

15. Costing Changes

a. *Labor.* Based upon the Air Force Management Engineering Agency (AFMEA) man-hour availability report, the Revision increases the annual available productive hours per Federal employee from 1744 hours to 1776. Fringe benefit factors are updated and expanded to include the projected costs of retirement health benefits to the Government. The standard retirement cost factor for the Federal Government's complete share of the weighted CSRS/FERS retirement cost to the Government, based upon the full dynamic normal cost of the retirement systems; the normal cost of accruing retiree health benefits based on average participation rates; Social Security; and Thrift Savings Plan (TSP) contributions has been increased from 21.7 percent to the current (1996) rate of 23.7 percent of base payroll for all agencies.

Agency and Public Comments: There was very little comment or disagreement on the cost of labor or fringe. One commenter noted that the number of productive military hours in a given year are not cited and suggested that a 30 percent cost penalty be added to in-house bids that assume continued or mixed military operations. The Revision has been changed to require the Service's Comptroller to establish the number of military productive hours in a year.

b. *Material Costs.* The escalation rates for supplies received from GSA and DLA are removed. The escalation issues reflected in the 1983 Supplement are now reflected in the reimbursable rates used by these agencies.

Agency and Public Comments: There was very little comment or disagreement on the cost of materials.

c. *Overhead.* The inclusion of direct and indirect operations and general and administrative overhead has long been an area that has led to difficulty and controversy. This controversy has been aggravated by the fact that the Supplemental Handbook requires, generally, the calculation of the competitive costs of in-house MEO performance, not the fully allocated cost of in-house (or contract) performance. In an effort to resolve this problem and improve the integrity of the cost comparison process, the Revision requires a standard overhead cost factor of 12 percent of direct labor costs.

Agency and Public Comments: Industry and trade groups strongly supported the standard overhead cost factor concept. It has been their sense that agencies have significantly understated overhead in A–76 cost comparisons, generally. One commenter, recognizing the difference between fully allocated costs and the comparative cost approach utilized by the Supplement, suggested a rate of 15 percent instead of the 12 percent in the comment draft. Agencies were either silent on the issue, agreed, or agreed in principle but recommended a range of alternative factors (ranging from 5 percent to 12 percent).

The Revision continues to require a 12 percent standard overhead cost rate in each cost comparison. Within DOD, however, the Revision distinguishes civilian from military overhead. DOD military overhead will be established by the Service Comptroller. It should also be reemphasized that the Revision permits any agency to submit data to justify any one of a series of alternative agency-wide standard cost factors to OMB for approval.

d. *Cost of Capital.* The 1983 Supplement did not require agencies to consider the cost of capital in the development of their in-house cost estimate, though such costs were effectively included in competitive contract offers. The Revision requires that agencies include the cost of capital for those assets purchased two years before or during the cost comparison performance period and not provided to the contractor as Government Owned and Contract Operated (GOCO) equipment or facilities. Neither capital nor depreciation costs of GOCO facilities and equipment are included in the cost comparison. This change is designed to remove current incentives to delay cost comparisons while new, more efficient equipment is acquired and to reflect the real costs of new assets to the taxpayer.

Agency and Public Comments: There was very little comment or disagreement on the limited inclusion of the cost of capital.

e. *Severance Pay.* The 1983 Supplement permitted agencies to calculate severance at 2% of direct labor or as determined by a Mock RIF. Based

upon the low actual severance rates incurred to date and to avoid the significant administrative costs and delays attendant with conducting a detailed Mock RIF, the comment draft would have restricted severance costs added to the contract bid to 2% of labor costs.

Agency and Public Comments: Upon review, several commenters suggested that the 2 percent severance factor is too low given current downsizing efforts. Placement is getting more and more difficult and a wider range of services are now being considered for conversion. It was also noted that recent emphasis on interservice support agreements and franchising will result in the elimination of additional placement opportunities.

To accommodate these concerns, the Revision now uses a factor of 4 percent. Agencies may also develop agency-wide severance pay factors, with associated documentation, for approval by OMB.

f. *Contract Administration.* The 1983 Supplement permitted agencies to use a contract administration factor (Table 3–1) or more accurate data. Again, in an effort to improve upon the integrity of the cost comparison process and reduce the administrative burdens of conducting a cost comparison, the Revision requires the use of Table 3–1, but the factors have been increased for most studies. This approach balances recent changes in Federal procurement regulations, that make contract administration easier, with concern that proper oversight is achieved.

Agency and Public Comments: There was very little comment or disagreement on the cost factor for contract administration.

g. *Gain or loss on Assets.* The 1983 Supplement permitted agencies to add to the contract price the loss taken on any asset excessed, even if the asset is used by the in-house MEO and not made available to the contractor. The Revision does not permit any losses to be calculated on any asset not included in the MEO. Assets used by the MEO and not made available to the contractor can only be calculated as gains and subtracted from the contractor's bid.

Agency and Public Comments: There was very little comment or disagreement on this issue.

h. *The minimum Differential.* The minimum differential represents three costs; (1) costs not specifically included in the in-house cost estimate; (2) unknown morale and other disruption costs caused by a conversion decision; and (3) a minimum level of estimated savings to the taxpayer. The differential also applies to conversion to in-house performance.

Agency and Public Comments: There was very little comment or disagreement on the minimum differential, although one commenter recommended its elimination. Initially, the draft provided for the minimum differential to be set at 10 percent of the labor costs in line 1 of the cost comparison form. It was noted, however, that this differential can become more and more burdensome as studies involve larger groups of employees. For this reason the minimum differential is capped for conversions to or from in-house, contract or interservice support agreement performance at the lesser of 10 percent of in-house personnel-related costs (Line 1) *or* 10 million over the performance period. Whenever a cost comparison involves a mix of existing in-house, contract, new or expanded requirements, or assumes full or partial conversions to in-house performance, each portion is addressed individually and the total minimum differential is calculated accordingly.

I. *Prorating of Asset Costs.* The Revision provides that assets made available to the contractor are eliminated from consideration in the cost comparison. Only the remaining competitive costs of operations or maintenance are included. Assets not made available to the contractor are included at their depreciation values.

Agency and Public Comments: One commenter suggested that assets used by more than one in-house activity should also be treated as a common cost and not included in the Government's in-house estimate. The problem is that conversion to contract or interservice support agreement will change that asset's consumption rate. Equity requires that all assets used by the MEO *and* not provided to the contractor be treated as having value, particularly when the contractor must replace those assets at a direct cost to that contractor's competitive offer.

16. Other Changes

Other changes in the Revised Supplement are designed to address specific problems that have been raised over the years. These include the following:

a. Interservice Support Agreements

The 1983 Supplement required agencies to conduct cost comparisons with the private sector prior to entering into an interservice support agreement (ISSA). The 1983 Supplement also required all existing interservice support providers to cost compare their current operations not later than September 30, 1987, or all related work would be converted directly to contract performance.

The Revision clarifies policies regarding the use of interservice support agreements and establishes revised cost comparison requirements. ISSAs may offer agencies the opportunity to reduce costs through economies of scale. As a result and to encourage agency consideration of ISSAs, the Revision permits agencies to consolidate existing, new or expanded work requirements to ISSAs, without cost comparison, if that work is transferred prior to October 1, 1997, and the consolidation does not result in a conversion of work to or from contract performance and the conversion is not otherwise authorized by the Revision. Effective October 1, 1997, the Revision will permit agencies to continue and to renew existing ISSA agreements without cost comparison. Agency heads may also consolidate support services into new, intra-service revolving or franchise funds without cost comparison—assuming that such a consolidation does not involve the conversion of work to or from in-house or contract performance. Effective October 1, 1997, and unless otherwise exempt from the cost comparison requirements of the Circular, new or expanded interservice support requests must be justified by a cost comparison. ISSAs that have themselves, however, conducted a cost comparison with the private sector may, at the customer agency's discretion, accept new or expanded work without further cost comparison on the customer or provider agency's part, until the provider agency's workload increases by 30 percent or 65 FTE, at which time another provider cost comparison is required.

Agency and Public Comments: Reaction to proposed interservice support agreement cost comparison requirements was as mixed as it was strong. The industry and trade group commenters were opposed to the cost comparison process outlined in the Revision, as weakening the provisions of the 1983 Supplement, though it is recognized that the 1983 provisions were not complied with in practice. The Revision, generally, only restricts the growth of these activities and then only as determined by a cost comparison.

In contrast and with only one exception, Federal agencies were equally opposed to any requirement to compete even new or expanded work with the private sector, prior to initiating an interservice support agreement. Agencies are concerned that requiring A–76 cost comparisons for interservice support agreements will have a chilling effect upon the efficient

use of such agreements. In the view of the several commenters, the under-utilization of existing Government capacity is already cause for concern. The agencies were also opposed to the inclusion of depreciation, capital, contract administration costs and the minimum differential, when comparing interservice support agreement costs with agency or contract offers. More importantly, these commenters expressed concern that the administrative flexibilities made available by ISSAs will be lost if subject to A–76 administrative appeal.

To further full and open competition, OMB has, in large part, not adopted these agency recommendations. Interservice support agreements are designed to provide commercial activities, under contract and under an agreed upon reimbursable rate. Existing ISSAs will continue at the customers option. The Revision relies on competition to determine their growth. It is inappropriate to simply displace a private sector offeror by resorting to internal agreements. Concerns for administrative flexibility are met by the Revision's use of exemptions, waiver opportunities and the incentives created to encourage existing ISSAs to compete directly with the private sector. Nevertheless, in an effort to encourage agencies to consider ISSAs, the draft was changed to permit agencies to consolidate work to ISSAs prior to October 1, 1997, without a cost comparison.

One commenter that strongly agreed with the draft's outline and requirements, also sought to have the Revision clarify what a proposing agency needed to submit in response to a requesting agency's solicitation and to clarify the requesting agency's right to reject an ISSA proposal. These changes have been made. The requirement was also clarified to permit Federal and State governments to provide and receive services without cost comparison to meet emergency disaster relief requirements.

Finally, several commenters suggested that a specific exception be granted to inherently governmental activities, particularly interagency contract administration services. As previously noted, inherently governmental functions are not subject to the cost comparison requirements of the Circular or this Supplement. The Revision clarifies, however, that inherently governmental levels of contract administration are not subject to the cost comparison requirements of the Supplement.

b. Military Personnel

The 1983 Supplement provided that commercial activities performed by military personnel were to be converted to civilian performance. This resulted in a reluctance to cost compare certain activities. The Revision permits the military Services to cost military personnel at the composite rate issued by the DOD Comptroller and, if retained in-house, would permit these activities to continue to be performed by military personnel. This change does not, however, authorize the conversion from in-house civilian to military personnel.

Agency and Public Comments: There was very little comment or disagreement on this issue.

c. Source Selection

There have been complaints that the 1983 Supplement was too cost determinative and that it relied too heavily on the low bid offeror. The benefits of competition should be expressed in terms of the quality of services and in terms of cost to the taxpayer. The problem has been how the Government's quality of services will be evaluated and by whom, when: (a) A Government agency itself has a vested interest in the competition and (b) the best overall private sector offeror chosen from among qualified and responsive offerors is not the low contract offeror. Guidance is provided on the use of competitive negotiation or source selection techniques in A–76 cost comparisons. The Revision permits agencies to conduct cost comparisons and award to other than the low private sector offeror.

Agency and Public Comments: The private sector, generally, raised concerns regarding the use of ''best value'' contracts and the inclusion of ''past performance'' in the selection process. While recognizing that the Revision includes needed guidance on the use of source selection and negotiated procurement in a cost comparison with a vested Government interest, these commenters sought assurances that the Government's in-house bid would also undergo a ''best value'' and a ''past performance'' evaluation. The problem, of course, is that the A–76 process assumes that the selected private sector offeror will compete with a duly authorized Government cost estimate. A costing penalty that would assume that the in-house bid was not a good past performer was suggested, but not quantified, or accepted.

A–76 has long assumed that in-house performance is acceptable and, thus, the in-house bid has always been treated as a responsive, responsible offer. This is not unlike what is done in the private sector when a true make or buy decision is being analyzed. While it is true that as much as 25 percent of a contractor's technical proposal may be weighted for evaluation purposes for past performance, the contractor's bid does not directly include past performance in competition with the Government's cost estimate. The recommendation has not, therefore, been accepted.

d. Appeals

Following a tentative waiver or cost comparison decision, the A–76 Administrative Appeals process is invoked. The procedure does not authorize an appeal outside the agency or judicial review, nor does it authorize sequential appeals.

The Revision extends the time frame that appeals may be submitted from 15 working days to 20. The agency may extend the appeal period to a maximum of 30 work days if the cost study is particularly complex.

Agency and Public Comments: One commenter placed great emphasis on the appeals process and was generally supportive of the process outlined by the Revision. Greater latitude in the range of issues that are subject to appeal, clarification as to the right to appeal agency waiver decisions, and for the right to appeal to an authority outside of the agency was requested. The Revision was changed to clarify that appeals may be made, based upon the factual information contained in agency waiver justifications. Changes were also made to modify the scope of eligible appeals to include: formal information denials, instances of clear A–76 policy violations, and to clarify that streamlined and sector specific cost comparisons were subject to appeal.

Not accepted was a recommendation to permit appeals of agency reorganizational decisions. The issue here is the establishment of an agency's reorganization for the alleged ''purpose'' of violating the Circular. The recommendation could potentially subject all modifications and organizational changes to an A–76 appeal. Also not accepted was a recommendation that appeals be decided by another agency. The request to appeal to an outside agency was not accepted, because it would be administratively burdensome and because experience with the Circular has not shown intra-agency appeals to be flawed. We should note, however, that the Revision raises the level of the appeal authority above that provided in the 1983 Supplement. Finally, one commenter requested authority to

appeal agency ''core'' determinations. This recommendation was not accepted; these are non-appealable management decisions.

One commenter noted that the appeals procedures did not specifically address the use of performance measures as permitted by Part I, Chapter 1.C.7. An additional paragraph clarifying this point has been included in the Revision.

Another commenter suggested that the private sector should be able to initiate a cost comparison requirement and, further, appeal any agency decision to dismiss private proposals to contract out or conduct a cost comparison. This recommendation was not accepted. The decision to conduct a cost comparison, like other management decisions, is left to the agency's discretion without appeal. While vendors may make proposals to agency mangers to contract out and may identify ways to reduce cost or overhead and improve services, there is no administrative recourse provided by this Supplement, if the agency opts not to conduct a study.

e. Right of First Refusal

The concept of the Right-of-First-Refusal was first established by the 1979 Supplemental Handbook. This concept holds that, as a condition of contract award, the contractor in an A–76 decision to convert from in-house to contract performance shall provide adversely affected Federal employees the ''Right-of-First-Refusal'' for jobs created in the contractor's organization as a result of the award of the contract. The Revision reaffirms this as a superior requirement, while incorporating E.O. 12933, ''Non- Displacement of Qualified Workers Under Certain Contracts,'' dated October 20, 1994, which extends the Right-of-First-Refusal to existing and to subsequent contract employees in this or follow-on contracts.

Agency and Public Comments: There was no comment on this issue.

[FR Doc. 96–7868 Filed 3–29–96; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 38–128]

Proposed Collection; Comment Request Review of an Expiring Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of an expiring information collection. RI 38–128, Annuity Payment Election, is used to give recent retirees the opportunity to waive Direct Deposit of their payments from OPM. The form is sent only if the separating agency did not give the retiring employee this election opportunity.

We estimate 45,500 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 22,750 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–7857 Filed 3–29–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Public Announcement

Pursuant to the Government in the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 1:00 p.m., Tuesday, April 2, 1996.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting.

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Approval of the U.S. Parole Commission's Draft Transfer Treaty Training Manual.
4. Discussion of the Proposed Quorum at § 2.26.
5. Report on Streamlining Activities.
6. Proposed Policy for Special Parole Term Violators in the Fifth Circuit.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 28, 1996.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 96–8017 Filed 3–28–96; 2:27 pm]

BILLING CODE 4410–01–M

Sunshine Act Meeting

Record of Vote of Meeting Closure

(Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Jasper Clay, Jr., Vice Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately two o'clock p.m. on Thursday, March 14, 1996 at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide four appeals from National Commissioners' decisions pursuant to 28 C.F.R. Section 2.27. Six Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., Vincent J. Fechtel, Jr., John R. Simpson, and Michael J. Gaines.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: March 28, 1996.

Jasper Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 96–8018 Filed 3–28–96; 8:45 am]

BILLING CODE 4410–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21857; International Series Release No. 958; File No. 812–9702]

ABN AMRO Bank N.V., et al.; Notice of Application

March 26, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: ABN AMRO Bank N.V. (''ABN AMRO''), ABN AMRO Effectenbewaarbedrijf N.V. (''AAEB''), and ABN AMRO Global Custody N.V. (''AAGC'') (collectively, the ''ABN AMRO Applicants''); and MeesPierson N.V. (''MeesPierson''), MeesPierson Effectenbewaarbedrijf N.V. (''MPEB''), and MeesPierson Global Custody Services N.V. (''MPGCS'') (collectively, the ''MeesPierson Applicants''). (ABN AMRO and MeesPierson are collectively referred to as the ''Banks''). (AAEB, AAGC, MPEB, and MPGCS are collectively referred to as the ''Special Purpose Corporations'').

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 U.S. investment companies and their custodians or subcustodians to maintain securities and other assets in the custody of AAEB and AAGC, through ABN AMRO, and MPEB and MPGCS, through MeesPierson, in The Netherlands.

FILING DATE: The Application was filed on August 3, 1995 and amended on March 20, 1996.

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 April 22, 1996 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.

ADDRESS: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: the ABN AMRO Applicants, Foppingadreef 22, 1102 BS Amsterdam, The Netherlands; the MeesPierson Applicants, Rokin 55, 1012 KK 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. ABN AMRO is a Netherlands banking organization. ABN AMRO Holding N.V. (''Holding'') is the parent company of ABN AMRO, and together with other domestic and international subsidiaries and affiliates, constitute the ''ABN AMRO Group.'' Holding and ABN AMRO are regulated in The Netherlands by De Nederlandsche Bank N.V., the Dutch Central Bank (''DNB''). As of December 31, 1994, Holding held approximately 100% of the share capital of ABN AMRO, and ABN AMRO accounted for approximately 100% of the total assets of Holding. ABN AMRO provides a variety of commercial banking and securities services on an international basis. At December 31, 1994, Holding had total assets of approximately U.S. $291 billion and shareholders' equity of approximately U.S. $11.9 billion.

2. AAEB and AAGC are public limited liability companies organized under the laws of The Netherlands. AAEB is a Special Purpose Corporation incorporated by ABN AMRO pursuant to a uniform system for the administration and safekeeping of bearer securities held in The Netherlands known as the ''Vabef System.'' AAGC is a Special Purpose Corporation incorporated by ABN AMRO pursuant to a system for the administration and safekeeping of bearer securities held outside The Netherlands and all registered securities referred to as ''Vabef II.'' Neither AAEB nor AAGC engages in any activity other than the safekeeping of securities for the benefit of ABN AMRO's clients and for ABN AMRO itself, effectively serving only as a ''vault'' for the safekeeping of such securities. ABN AMRO provides its clients with all custody-related services with respect to these securities.

3. MeesPierson is a banking organization regulated in The Netherlands by DNB. MeesPierson, a wholly owned subsidiary of ABN AMRO, is a global merchant bank that provides a variety of specialized financial services. At December 31, 1994, MeesPierson had total assets of approximately $22 billion and approximately $1.2 billion in shareholders equity.

4. MPEB and MPGCS are public limited liability companies organized under the laws of The Netherlands. MPEB is a Special Purpose Corporation incorporated by MeesPierson pursuant to the Vabef System. MPGCS is a Special Purpose Corporation incorporated by MeesPierson in connection with Vabef II. MPEB and MPGCS do not engage in any activity other than the safekeeping of securities for the benefit of MeesPierson's clients and for MeesPierson itself, effectively serving only as vaults for the safekeeping of such securities. MeesPierson provides its clients with all other custody-related services with respect to these securities.

5. Applicants request an order exempting (a) The ABN AMRO Applicants and the MeesPierson Applicants, (b) any investment companies registered under the Act other than those registered under section 7(d) of the Act (''U.S. Investment Companies''), and (c) any custodian or subcustodian for a U.S. Investment Company, from the provisions of section 17(f) of the Act to the extent necessary to permit such U.S. Investment Companies and such custodians or subcustodians to maintain securities and other assets (''Securities'') in the custody of the ABN AMRO Applicants and the MeesPierson Applicants.[1] None of the Special Purpose Corporations is a ''bank'' within the meaning of the Act and each may not technically be a ''banking institution or trust company'' regulated as such by the Government of The Netherlands in accordance with the requirements of rule 17f–5. Moreover, none of the Special Purpose Corporations meets the minimum shareholder's equity requirement of the rule.

6. Applicants state that under the laws of The Netherlands, unless special measures are taken, bearer securities

[1] As used herein, the term ''Securities'' does not include securities issued or guaranteed by the U.S. Government or by any state or any political subdivision thereof, or any agency thereof, or by an entity organized under the laws of the U.S. 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 U.S.).

which a bank holds as custodian for its clients and registered securities registered in the name of a bank as custodian for its clients, will form part of the assets of that bank. Applicants contend that if the bank becomes insolvent, these securities will fall within the bankruptcy estate. Although the likelihood of a bank supervised by the DNB becoming insolvent is negligible, applicants assert that it is nevertheless considered desirable to segregate a Dutch bank's assets from those of its clients.

7. Applicants represent that the sole purpose for the establishment of the Special Purpose Corporations by the Banks and their use for the safekeeping of Securities is to provide the highest level of protection to the Banks' clients and to ensure that clients' assets could not fall within the bankruptcy estate of the Banks. Under the Vabef System and Vabef II, the client has a direct right against the relevant Special Purpose Corporation with respect to the Securities deposited. The obligations of each Special Purpose Corporation with respect to such Securities are solely towards its clients. Consequently, the clients' rights with respect to these Securities are separated from the Bank's own assets and, therefore, are protected under the laws of The Netherlands from any risk of the Bank becoming insolvent and from recourse by the Bank's creditors.

8. Applicants state that a Special Purpose Corporation is expressly prohibited by its Articles of Association from engaging in any activity which could involve a commercial risk, and does not engage in any activity other than the safekeeping of securities for the benefit of the incorporating bank's clients or the bank itself. The Special Purpose Corporations will have no creditors other than those who have entrusted securities to them and those whose claims would arise in the ordinary course of business.

9. The personnel of each Bank manages and operates its respective Special Purpose Corporation. Each Bank is the managing director of its respective Special Purpose Corporation and acts to the fullest extent on its behalf and in its name, both towards clients and third parties. The activities of the Banks in their capacity as the managing directors of their respective Special Purpose Corporations are governed by rules jointly adopted by the Banks and their respective Special Purpose Corporations. The rules, which include a guarantee by the Banks of the obligations of their respective Special Purpose Corporations, are incorporated into each custody agreement entered into between the Banks and a U.S. Investment Company.

10. Pursuant to contracts between each Bank and the Special Purpose Corporation, the Banks are obligated to reimburse the Special Purpose Corporations for losses that may be incurred in any year. Applicants assert that, to the extent that claims of creditors cannot be paid by fees charged by the Special Purpose Corporations, they will be paid by the appropriate Bank. Therefore, in practice, the claims against a Special Purpose Corporation will never exceed the total of the securities which its clients have entrusted to it.

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.

2. Rule 17f–5 under the Act permits certain entities located outside the U.S . to serve as custodians for investment company assets. Rule 17f–5 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. Each of the Banks qualifies as an ''Eligible Foreign Custodian'' and each provides all the services of a custodian, other than the safekeeping of securities. The Banks utilize their respective Special Purpose Corporations only to provide for the safekeeping of certain securities. The Special Purpose Corporations, however, do not qualify as ''Eligible Foreign Custodians,'' because technically they may not be regulated as ''banking institutions or trust companies'' by the Government of The Netherlands and because they do not have shareholders' equity in excess of $200 million.

4. Applicants contend that the purpose of section 17(f) of the Act is to ensure that U.S. Investment Companies hold securities in a safe manner that protects the interests of their shareholders. Applicants assert that the requested exemptions are consistent with these purposes because they would provide adequate protection for the custody of the Securities of the U.S. Investment Companies through either ABN AMRO or MeesPierson in reliance on their affiliated, bankruptcy-remote, Special Purpose Corporations.

5. Applicants represent that under the Vabef System and Vabef II, the two components of the custodial function, safekeeping and the provision of administrative custodial services, have formally been segregated, but that in daily practice the Banks and their respective Special Purpose Corporations operate as one entity. While the Securities are held by the Special Purpose Corporations, applicants assert that the Banks remain charged with, and responsible for, virtually all of the acts implementing the custody of the Securities. Applicants assert that, although each of the Special Purpose Corporations may not be technically regulated as a ''banking institution or trust company'' by DNB, as a practical matter, their management and operation are subject to the supervision of DNB through the supervision DNB exercises over ABN AMRO and MeesPierson.

6. Applicants believe that the requested order is necessary and appropriate in the public interest because it would permit U.S. Investment Companies and their custodians and subcustodians to have access to the custody services of ABN AMRO and MeesPierson in the Netherlands. Based upon (a) the legal framework and market practices in The Netherlands, (b) the size and strength of ABN AMRO and MeesPierson, and (c) the guarantee to be given by ABN AMRO with respect to AAEB and AAGC, and MeesPierson with respect to MPEB and MPGCS, applicants assert that U.S. Investment Companies and their custodians and subcustodians will have an equal or greater degree of protection when their Securities are held in custody by the Banks in reliance upon the services provided by the Special Purpose Corporations than when their Securities are held with other entities which strictly comply with all of the requirements for an ''Eligible Foreign Custodian.''

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

The ABN AMRO Applicants

1. The foreign custody arrangements which involve or rely upon AAEB and AAGC will comply with the provisions of rule 17f–5 in all respects except those provisions relating to (a) the fact that each of AAEB and AAGC may not be technically a ''banking institution or trust company'' incorporated or organized under the laws of The Netherlands, and (b) the minimum shareholders' equity requirements for ''Eligible Foreign Custodians'' under rule 17f–5.

2. A U.S. Investment Company or a custodian or subcustodian for a U.S. Investment Company will deposit Securities with AAEB and AAGC through ABN AMRO only in accordance with a three-party contractual agreement (a ''Three Party Agreement'') that will remain in effect at all times during which AAEB and AAGC fail to meet all of the requirements of Rule 17f–5 (and during which such Securities remain deposited with AAEB and AAGC). Each Three Party Agreement will be a three-party agreement among (a) ABN AMRO, (b) AAEB or AAGC, and (c) the U.S. Investment Company or custodian or subcustodian of the Securities of the U.S. Investment Company. Under the Three Party Agreement, AAEB or AAGC will undertake to provide only specified custodial or subcustodial services. The Three Party Agreement will further provide that ABN AMRO will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by AAEB and AAGC of their respective responsibilities under the Three Party Agreement to the same extent as if ABN AMRO had been required to provide all custody services under such Three Party Agreement.

3. ABN AMRO currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in subsection (c)(2)(i) of rule 17f–5.

4. ABN AMRO will be regulated by DNB as a banking institution under the laws of The Netherlands.

The MeesPierson Applicants

1. The foreign custody arrangements which involve or rely upon MPEB and MPGCS will comply with the provisions of rule 17f–5 in all respects except those provisions relating to (a) the fact that each of MPEB and MPGCS may not be technically a ''banking institution or trust company'' incorporated or organized under the laws of The Netherlands, and (b) the minimum shareholders' equity requirement for ''Eligible Foreign Custodians'' under rule 17f–5.

2. A U.S. Investment Company or a custodian or subcustodian for a U.S. Investment Company will deposit Securities with MPEB and MPGCS through MeesPierson only in accordance with a three-party contractual agreement (a ''Three Party Agreement'') that will remain in effect at all times during which MPEB and MPGCS fail to meet all of the requirements of rule 17f–5 (and during which such Securities remain deposited with MPEB and MPGCS). Each Three Party Agreement will be a three-party agreement among (a) MeesPierson, (b) MPEB or MPGCS, and (c) the U.S. Investment Company or custodian or subcustodian of the Securities of the U.S. Investment Company. Under the Three Party Agreement, MPEB of MPGCS will undertake to provide only specified custodial or subcustodial services. The Three Party Agreement will further provide that MeesPierson will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by MPEB and MPGCS, of their respective responsibilities under the Three Party Agreement to the same extent as if MeesPierson had been required to provide all custody services under such Three Party Agreement.

3. MeesPierson currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in subsection (c)(2)(i) of rule 17f–5.

4. MeesPierson will be regulated by DNB as a banking institution under the laws of The Netherlands.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7841 Filed 3–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21858; File No. 812–9852]

Berger Institutional Products Trust, et al.

March 26, 1996.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Berger Institutional Products Trust (the ''Trust'') and Berger Associates, Inc. (''Berger Associates'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Trust and shares of any other investment company that is designed to fund insurance products and for which Berger Associates, or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (collectively, with the Trust, the ''Funds'') to be sold to and held by: (a) Variable annuity and variable life insurance companies (the ''Participating Insurance Companies''); and (b) qualified pension and retirement plans outside the separate account context (the ''Plans'').

FILING DATE: The application was filed on November 8, 1995, and amended on March 20, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 22, 1996, and 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 interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20459. Applicants, Kevin R. Fay, Vice President—Finance and Administration, Berger Associates, Inc., 210 University Boulevard #900, Denver, Colorado 80206.

FOR FURTHER INFORMATION CONTACT: Wendy Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Trust, an open-end, management investment company organized as a Delaware business trust, currently consists of three separate investment portfolios: the Growth Fund,

the Growth and Income Fund and the Small Company Fund. The Trust may create additional portfolios in the future.

2. Berger Associates serves as the investment adviser for each of the Trust's portfolios. Berger Associates is registered as an investment adviser under the Investment Advisers Act of 1940.

3. Applicants state that the Trust initially intends to offer its shares exclusively to Plans and to variable annuity separate accounts, but, upon the granting of the order requested in this application, contemplates offering its shares to one or more variable life insurance separate accounts established by insurance companies that may or may not be affiliated with one another.

4. The Participating Insurance Companies will establish their own separate accounts (the ''Accounts'') and design their own variable annuity and variable life insurance contracts (''Contracts''). Applicants state that the role of the Fund under this arrangement will consist of offering shares to the Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

5. Applicants state that the Funds can increase their asset base through the sale of shares of the Funds to the Plans. The Plans may choose any of the Funds as the sole investment option under a Plan or as one of several investment options. Participants in the Plans may be given an investment choice depending upon the Plan. Shares of any of the Funds sold by the Plans will be held by the trustees of the Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act (''ERISA''). Berger Associates will not act as investment adviser to any of the Plans that will purchase shares of the Funds. Applicants note that, pursuant to ERISA, pass-through voting is not required to be provided to participate in the Plans.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (''UIT''), Rule 6e–2(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares ''exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company.'' The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate account is referred to as ''mixed funding.'' The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed funding as well as shared funding.

2. Applicants state that because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Fund are also to be sold to Plans.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Therefore, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if shares of the Funds are also to be sold to Plans.

5. Applicants state that changes in the tax law have created the opportunity for the Funds to increase their asset base through the sale of Fund shares to the Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification standards on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as annuity contracts or life insurance contracts for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts. Treas. Reg. § 1.817–5 (1989). The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants therefore request relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed and shared funding.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). Rules 6e–2(b) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that

person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a).

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(a)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission interprets the 1940 Act to require such privileges.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

12. Applicants further represent that the Funds' sale of shares to the Plans does not impact the relief requested in this regard. As noted previously by Applicants, shares of the Funds sold to Plans would be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans.

13. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants asset that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. Applicants note that where insurers are domicile in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could required action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

14. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences among state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate accounts's investment in the relevant Fund.

15. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by owners of the Contracts. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its investment in that Fund. No charge or penalty will be imposed as a result of such withdrawal.

16. Applicants state that there is no reason why the investment policies of a Fund with mixed funding would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the Funds will not be managed to favor or disfavor any particular insurance company or type of Contract.

17. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance

contracts held in the portfolios of management investment companies. Treasury Regulation 1.817.5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan is unable to net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their respective net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the Participating Insurance Company will make distributions in accordance with the terms of the variable contract.

19. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to the trustees of Plans. Applicants represent that the transfer agent for the Funds will inform each Participating Insurance Company of its share ownership in each separate account, and will inform the trustees of Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

20. Applicants contend that the ability of the Funds to sell their respective shares directly to Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans and the Accounts have rights only with respect to their shares of the Funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Finally, Applicants state that there are no conflicts between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree that there are inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition that insurance companies usually are unable simply to redeem their separate accounts out of one fund and invest those monies in another fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Plans conflict, the issues can be almost immediately resolved because the trustees of the Plans can, independently, redeem shares out of the Funds.

22. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management (principally with respect to stock and money market investments); and the lack of name recognition by the public of certain insurers as investment professionals. Applicants contend that use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of Berger Associates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants represent that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by the Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

23. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and shared funding where shares of a fund were sold directly to qualified plans such as the Plans.

Applicants' Conditions

Applicants have consented to the following conditions if the order requested in the application is granted:

1. A majority of the Board of Trustees or Board of Directors of each Fund (each, a ''Board'') shall consist of persons who are not ''interested persons'' of the Funds, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict among the interests of the Contract owners of all the Accounts investing in the respective Funds. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are managed; (e) a difference in voting

instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners.

3. The Participating Insurance Companies, Berger Associates (or any other investment adviser of the Funds), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a Fund (the ''Participants'') will report any potential or existing conflicts of which they become aware to the Board. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participant to inform the Board whenever it has determined to disregard voting instructions of Contract owners. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participants investing in the Funds under their agreements governing participation in the Funds and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants.

4. It if is determined by a majority of the Board, or by a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participant shall at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Accounts from the Funds and reinvesting such assets in a different investment medium including another portfolio of the relevant Fund or another Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners; and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity Contract owners or variable life insurance Contract owners of one or more Participants) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Plans from the affected Fund or individual Fund thereof and reinvesting those assets in a different investment medium, including another Fund; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard voting instructions of the owners of the Contracts, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its Account's investment in that Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds. The responsibility to take such material action shall be carried out with a view only to the interests of Contract owners and participants in Plans. For purposes of this Condition (4), a majority of the disinterested members of the applicable Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event will the relevant Fund or Berger Associates or any Plan be required to establish a new funding medium for any Contract. Further, no Participating Insurance Company shall be required by this Condition (4) to establish a new funding medium for any Contract if an offer to do so has been declined by a vote of a majority of Contract owners materially affected by the irreconcilable material conflict.

5. Any Board's determination of the existence of an irreconcilable material conflict and its implications will be made known promptly and in writing to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Fund held in their Accounts in a manner consistent with voting instructions timely received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their Accounts that participates in the Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Funds. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received voting instructions.

7. All reports received by the Board of potential or existing conflicts, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

8. Each Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) Shares of the fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to Plans; (b) material irreconcilable conflicts may arise from mixed and shared funding; and (c) the Fund's Board will monitor the Funds for any material conflicts and determine what action, if any, should be taken.

9. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Funds), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, (although the Funds are not within the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors or trustees and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rules 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and

shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

11. No less than annually, the Participants shall submit to the Boards such reports, materials, or data as those Boards may reasonably request so the Boards may carry out fully the conditions contained in these express conditions. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials, and data to the Boards shall be a contractual obligation of all Participants under the agreements governing their participation in the Funds.

12. If a Plan becomes an owner of 10% or more of the assets of a Fund, such Plan will execute a fund participation agreement with that Fund. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of the shares of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7845 Filed 3–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21855; No. 812–9808]

Principal Aggressive Growth Fund., et al.

March 25, 1996.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of Application for order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANTS: Princor Management Corporation (''Princor Management''), Principal Aggressive Growth Fund, Inc., Principal Asset Allocation Fund, Inc., Principal Balanced Fund, Inc., Principal Bond Fund, Inc., Principal Capital Accumulation Fund, Inc., Principal Emerging Growth Fund, Inc., Principal Government Securities Fund, Inc., Principal Growth Fund, Inc., Principal High Yield Fund, Inc., Principal Money Market Fund, Inc., Principal Special Markets Funds, Inc., Principal World Fund, Inc., Princor Balanced Fund, Inc., Princor Blue Chip Fund, Inc., Princor Bond Fund, Inc., Princor Capital Accumulation Fund, Inc., Princor Cash Management Fund, Inc., Princor Emerging Growth Fund, Inc., Princor Government Securities Income Fund, Inc., Princor Growth Fund, Inc., Princor High Yield Fund, Inc., Princor Tax-Exempt Bond Fund, Inc., Princor Tax-Exempt Cash Management Fund, Inc., Princor Utilities Fund, Inc., Princor World Fund, Inc. (individually a ''Fund,'' collectively, ''Funds''), and such other registered investment companies (''Future Funds'') that in the future are advised by Princor Management or an affiliated person thereof.

RELEVANT 1940 ACT SECTIONS: Order requested under Rule 17d–1 of the 1940 Act.

SUMMARY OF APPLICATION: Exemptions requested to the extent necessary to permit the Funds and Future Funds to pool their daily cash balances into a single joint trading account (''Joint Account'') for the purpose of investing those balances in one or more short-term investment transactions, including repurchase agreements and short-term money market instruments, to the extent permitted by each Fund's or Future Funds's investment objectives, policies and restrictions.

FILING DATES: The application was filed on October 5, 1995, and amended on March 13, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on April 19, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for layers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Michael D. Roughton, Esq., The Principal Financial Group, Des Moines, Iowa 50392–0300.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Each Fund is a Maryland corporation registered under the 1940 Act as an open-end, management investment company. Future Funds may include management investment companies organized in Maryland or in other states.

2. Princor Management is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as each Fund's investment adviser. Princor Management has retained sub-advisers to manage a number of Funds. Princor Management manages the short-term cash assets of each of the Funds except Principal Aggressive Growth Fund, Inc. and Principal Asset Allocation Fund, Inc. The short-term cash assets of those Funds are managed by their sub-adviser, Morgan Stanley Asset Management, Inc.[1]

3. Princor Management has discretion to purchase and sell securities for each Fund in accordance with its investment objectives policies and restrictions. Each Fund is authorized to invest in repurchase agreements, except Principal Capital Accumulation Fund., Inc., which will participate in repurchase transactions if and when it is authorized to do so. Each Fund is authorized to invest at least a portion of its uninvested cash assets in certain short-term money market instruments.

4. Bank of America National Trust and Savings Association (''Custodian'') currently is the custodian for all Funds except those Funds which will not participate in the proposed Joint Account for so long as they do not use Custodian: (a) Principal World Fund., Inc.; (b) Princor World Fund, Inc.; and (c) the International Portfolio of the Principal Special Markets Fund, Inc.

5. Applicants state that at the end of each trading day, it is expected that some or all of the Funds will have uninvested cash balances in their custodian accounts. Currently, such cash balances are used on an individual basis to invest in short-term instruments, including individual issues of commercial paper or United States Government agency paper. Applicants argue that these separate purchases result in certain inefficiencies which limit the return each of the Funds may

[1] Applicants state that Funds for which Princor Management or an affiliate does not manage short-term cash assets (including Principal Asset Allocation Fund, Inc. and Principal Aggressive Growth Fund, Inc.), are not expected to participate in the proposed joint account.

achieve. In addition, some Funds' assets are too small or become available too late to be invested effectively on an individual basis.

6. Accordingly, Applicants request an order to permit the Funds to deposit their uninvested cash balances into a single joint account (the ''Joint Account'') to be used to enter into one or more short-term investment transactions, including repurchase agreements and short-term money market instruments (''Joint Investment''). Applicants state that each Fund (''Participant'') will participate in the Joint Account and in any given Joint Investment on the same voluntary basis as every other Participant and in conformity with that Participant's fundamental investment objectives, policies and restrictions.

7. Applicants represent that the proposed Joint Account would invest in one or more repurchase agreements with a bank, a non-bank government securities dealer or major brokerage house.

8. Each of the Funds has established substantially similar systems and standards which require that repurchase agreements always be at least 100% collateralized. Repurchase agreements would be collateralized by obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities. Applicants represent that these systems and standards presently are in compliance with the standards and guidelines set forth in Investment Company Act Release No. 13005 (Feb. 2, 1983), and with other existing positions the Commission has taken regarding repurchase transactions.[2] Applicants will monitor the Commission's published statements on repurchase agreements and, in the event that the Commission sets forth different or additional requirements, each Participant will modify its systems and standards accordingly.

9. Each Participant will invest in repurchase agreements only to the extent such investment would be consistent with its investment objectives, policies and restrictions. Accordingly, each such repurchase agreement will be collateralized to the extent required by the most restrictive collateral requirements of the Participants. Further, each Participant will not necessarily invest in every Joint Investment: a Participant's investment restrictions could preclude it from participating in a repurchase agreement with a particular counterparty or from purchasing certain short-term instruments; a Participant's cash may not be available in time to be included in a repurchase agreement negotiated on a given day, or its cash may be insufficient to invest individually; and Princor Management may seek to limit investment risk by entering into multiple investments, even if the same return is available from each counterparty or issuer. Nevertheless, Applicants submit that all similarly situated Participants would benefit from the Joint Investment.

10. The proposed Joint Account also would purchase short-term money market instruments from dealers in the open market or directly from issuers. Investments will be in various taxable and tax exempt short-term money market instruments with overnight, over-the-weekend or over-the-holiday maturities. Such instruments may include: overnight commercial paper; Treasury bills; certain U.S. government agency certificates; Euro CDs; term bank deposits; certificates of deposit and bankers' acceptances for investment by taxable Funds; certain tax-exempt floating and variable rate demand notes and bonds; and such additional short-term money market instruments with overnight, over-the-holiday or over-the-weekend maturity as may become available. Princor Management will invest Participant assets only in short-term money market instruments which constitute ''eligible securities'' within the meaning of Rule 2a–7 under the 1940 Act.

11. Applicants will monitor the Commission's published statements on short-term money market instruments and, in the event that the Commission or its staff set forth guidelines with respect to such instruments, each Participant will conform its investments to such guidelines and, as necessary, will adopt appropriate systems and standards.

12. Princor Management will have no monetary participation in the joint account, but will be responsible for: investing assets in the Joint Account; establishing accounting and control procedures; and fairly allocating investment opportunities among the Funds.

13. The assets of a Participant held in the Joint Account will not be subject to the claims of creditors of other Participants.

14. Applicants assert that the proposed Joint Account arrangement would benefit Participants for a number of reasons, including the following:

- Participants would save significant amounts in yearly transaction fees by reducing the total number of transactions, thereby increasing the rate of return on their investments.[3]
- Participants would obtain a higher investment return through the Joint Account than through individual investment accounts. Because the Joint Account would invest larger cash amounts than the individual Funds, it could negotiate a higher rate of return than could be negotiated by each individual Fund.
- The Joint Account should result in an increase in the number of dealers willing to enter into Joint Investments with some of the Participants whose uninvested cash balances otherwise would be insufficient or be made available too late in the day to invest in such short-term instruments. Flexibility in the management of the Participants' cash balances thus would be enhanced, thereby reducing the possibility that any Participant will have a cash balance uninvested overnight.
- By reducing the number of trade tickets which would have to be written, the proposed Joint Account arrangement will simplify transactions and thus reduce the opportunity for errors.
- The use of a single Joint Account will result in savings of the costs of establishing and maintaining several different accounts. Applicants represent that the Joint Account's recordkeeping system will employ certain recordkeeping and accounting control mechanisms and that it will be substantively identical to that which would be used if several joint accounts were set up, with each investing only in specific types of instruments.

Applicants' Legal Analysis

1. Rule 17d–1 under the 1940 Act provides that an ''affiliated person'' of a registered investment company, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the Commission has issued an order approving such arrangement.

2. Section 2(a)(3) of the 1940 Act defines the term ''affiliated person'' of

[2] Applicants state that these systems and standards presently are in compliance with the Division of Investment Management's interpretations set forth in letters to the Investment Company Institute, dated January 25, May 7 and June 19, 1985.

[3] Currently, the Funds pay the Custodian a processing fee of $8.50 to $20 per transaction (based on different negotiated fee schedules under their respective agreements), regardless of the size of a transaction. Applicants represent that, during the twelve months ended December 31, 1994, aggregate fees and other transaction costs for the Funds approximated $97,000. Applicants assert that, if the proposed Joint Account had been in effect during this same period, such aggregate fees and costs would have approximated $64,000, for an annual savings of approximately $33,000.

another person to include ''any person under common control with such other person'' and, ''if such other person is an investment company, any investment adviser thereof.'' Applicants submit that Princor Management is an affiliated person of each of the Funds, and the Funds could be deemed to be affiliated persons of one another, within the meaning of Section 2(a)(3) of the 1940 Act.

3. Applicants further submit that each Fund—by participating in the proposed Joint Account arrangement—and Princor Management—by managing the proposed Joint Account—may be deemed to be joint participants in a transaction within the meaning of Section 17(d). In addition, the proposed Joint Account could be deemed a joint arrangement or joint enterprise within the meaning of Rule 17d–1 under the 1940 Act.

4. In passing applications under Rule 17d–1, the Commission may consider the extent to which an entity's participation in a joint arrangement or enterprise is on a ''basis different from or less advantageous than that of other participants.'' Each Participant's decision to invest in the Joint Account would be solely at its option. Participants will not be required either to invest a minimum amount or to maintain a minimum balance in the Joint Account. Applicants assert that because each Participant will hold a *pro rata* interest in, and receive a *pro rata* share of, the income derived from each repurchase agreement and short-term money market instrument held in the Joint Account in which such Participant has an interest, no Participant will receive fewer relative benefits from the proposed Joint Account arrangement than any other Participant.

5. Applicants represent that the board of directors of each Fund (each a ''Board'') has considered the proposed Joint Account arrangement and, based on information supplied by Princor Management, has determined that each Participant will benefit from the Joint Account arrangement. Applicants further represent that each Board has determined that the proposed method of operation for the Joint Account will not result in any conflicts of interest among the Participants. Applicants also represent that each Board also has determined that: There appears to be no basis upon which to predicate greater benefit to one Participant than to another; the operation of the Joint Account will be free of any inherent bias in favor of any one Participant over another; and the anticipated benefits flowing to each Participant should fall within an acceptable range of fairness.

6. Applicants represent that the Boards believe that the primary beneficiaries of this Joint Account arrangement will be the Participants and their shareholders, as the Joint Account represents a more efficient means of administering the Funds' daily investment transactions.

7. Applicants represent that the Boards have determined that their conclusions with respect to participation in the Joint Account by the Funds would not be altered by participation in the Joint Account by Future Funds. The Boards further have determined that it would be desirable to permit Future Funds to participate in the Joint Account without the necessity of applying for additional Commission authorization. Applicants represent that Future Funds will be permitted to participate in the Joint Account only on the same terms and conditions as the Funds have set forth herein.

Applicants' Conditions

Applicants agree that any order issued by the Commission in connection with this application will be subject to the following conditions.

1. A separate Joint Account will be established with the Custodian. Each Fund will be able to deposit its uninvested net cash balances into the Joint Account on a daily basis.

2. Cash in the Joint Account will be invested by Princor Management in repurchase agreements and/or short-term money market instruments with overnight, over-the-weekend or over-the-holiday maturities. Using the proposed Joint Account or making separate investments on behalf of individual Funds, Princor Management is obligated to consider the same factors, including: (a) Each Participant's investment objectives, policies and restrictions and repurchase agreement collateral requirements; (b) its obligation to fairly allocate investment opportunities among the Participants; (c) the need for diversification; and (d) the time when cash becomes available for investment on a given day.

3. A Fund's participation in a Joint Investment will be wholly voluntary and only to the extent permitted by its investment objectives, policies and restrictions. To the extent that a Participant's cash balance is applied to a particular Joint Investment, the Participant will own a proportionate share of such Joint Investment and the income earned or accrued thereon, based upon the percentage of such Joint Investment purchased with such Participant's cash balance.

4. Princor Management and the Custodian will maintain records documenting for any given day each Participant's aggregate investment in the Joint Account and its *pro rata* share of each Joint Investment. The records will be maintained in conformity with Section 31 of the 1940 Act and the rules thereunder.

5. Each repurchase agreement entered into through a Joint Investment will be collateralized by obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities to the extent required by the most restrictive collateral requirements of the Participants, in no event less than 100 percent. The securities subject to the repurchase agreement will be transferred to the Joint Account and they will not be held by the Participant's repurchase counterparty or by an affiliated person of that counterparty. The Joint Account will invest only in short-term money market instruments which constitute ''eligible securities'' within the meaning of Rule 2a–7 under the 1940 Act.

6. All investments held by the Joint Account will be valued on an amortized cost basis.

7. Each Participant valuing its net assets in reliance upon Rule 2a–7 under the 1940 Act will use the average maturity of the instrument(s) in the Joint Account in which such Participant has an interest for the purpose of computing that Participant's average portfolio maturity with respect to the portion of its assets held in the Joint Account for that day.

8. To ensure that there will be no opportunity for one Participant to use any part of the Joint Account credited to another Participant, no Participant will be allowed to create a negative balance in the Joint Account. However, a Participant will be permitted to draw down its entire balance at any time. No Fund will be obligated either to invest in the Joint Account or to maintain any minimum balance in the Joint Account.

9. Princor Management will manage the Joint Account as part of its duties under its existing or any future investment advisory contracts with the Funds. Princor Management will not collect an additional fee from any Fund for managing the Joint Account.

10. The administration of the Joint Account will be within the fidelity bond coverage required by Section 17(g) of the 1940 Act and Rule 17g–1 thereunder.

11. The Board members of each Fund will evaluate the Joint Account arrangements annually. Each Board will vote to continue a Fund's participation in the Joint Account only if it determines that there is a reasonable

likelihood that the Fund and its shareholders will benefit from the Joint Account arrangement, and no Participant will be treated on a less advantageous basis than another.

12. The Future Funds will be permitted to participate in the Joint Account only on the same terms and conditions as the Funds have set forth herein.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7799 Filed 3–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37024; File No. 600–25]

Self-Regulatory Organizations; Participants Trust Company; Order Granting Approval of Application for Extension of Temporary Registration as a Clearing Agency

March 26, 1996.

On February 22, 1996, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(a) of the Securities Exchange Act of 1934 (''Act''),[1] a request for extension of its temporary registration as a clearing agency under Section 17A of the Act for a period of one year.[2] Notice of PTC's request for extension of temporary registration appeared in the Federal Register on March 13, 1996.[3] This order approves PTC's request for extension of its temporary registration as a clearing agency through March 31, 1997.

On March 28, 1989, the Commission granted PTC's application for registration as a clearing agency pursuant to Sections 17A(b)(2) and 19(a) of the Act[4] on a temporary basis for a period of one year.[5] Subsequently, the Commission issued orders that extended PTC's temporary registration as a clearing agency.[6] PTC's current temporary registration extends through March 31, 1996.

As discussed in detail in the initial order granting PTC's temporary registration,[7] one of the primary reasons for PTC's registration was to develop depository facilities for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association (''GNMA''). PTC services include certificate safekeeping, book-entry deliveries, and other services related to the immobilization of securities certificates.

PTC continues to make significant progress in the areas of financial performance, regulatory commitments, and operational capabilities. For example, the original face value of securities on deposit at PTC as of December 31, 1995, totalled $1.1 trillion, which was an increase of approximately $1.26 billion over the amount on deposit as of December 31, 1994. Total pools on deposit, which were held at PTC in a total of 1.1 million participant positions, rose from 279,000 as of December 31, 1994, to more than 302,000 as of December 31, 1995.[8] In addition, PTC declared a dividend of $.98 per share to stockholders of record as of the close of business on December 21, 1995.[9] Four new participants and four new shareholders also were added in 1995 bringing the total participation in PTC to twenty-nine banks, twenty-three broker/dealers, and two government-sponsored enterprises.

In support of the securities industry's effort to move security payments to same-day funds, PTC also saw continued improvement in its GNMA I principal and interest (''P&I'') collection and disbursement efforts. For example, PTC modified its program for the intraday distribution of GNMA I P&I by increasing the maximum amount of collected and available GNMA I P&I that may be distributed intraday from fifty percent to sixty-five percent.[10] An overall reduction in mortgage prepayment trends throughout 1995 had a noticeable impact on the volume of P&I disbursed, which was $86 billion in 1995 compared to $116 billion in 1994.

PTC also continued its efforts over the past year to implement the operational and procedural changes that PTC committed to make in an agreement with the Commission and with the Federal Reserve Bank of New York in connection with PTC's original temporary registration.[11] For example, PTC implemented improvements to its SPEED securities processing system on January 8, 1996.[12] These improvements cause transaction credits and debits to be posted simultaneously on the deliver and receive sides of a transaction. PTC believes that this change to its processing system satisfies Commitment No. 3 of PTC's nine commitments. Of PTC's nine commitments, only Commitment No. 6 remains to be fulfilled by PTC.[13]

The Commission believes that PTC has functioned effectively as a registered clearing agency for the past seven years and has demonstrated that it has the operational and procedural capacities to comply with the statutory obligations set forth under Section 17A(b)(3) of the Act,[14] which sets forth the prerequisites for registration as a clearing agency. Therefore, the Commission is extending PTC's temporary registration as a clearing agency through March 31, 1997. Comments received during PTC's temporary registration will be considered in determining whether PTC should receive permanent registration as a clearing agency under Section 17A(b) of the Act.[15]

It is therefore ordered, that PTC's registration as a clearing agency be and hereby is approved on a temporary basis through March 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

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[1] 15 U.S.C. § 78s(a) (1988).

[2] Letter from John J. Sceppa, President and Chief Executive Officer, PTC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (February 21, 1996).

[3] Securities Exchange Act Release No. 36938 (March 7, 1996), 61 FR 10409.

[4] 15 U.S.C. §§ 78q–1(b)(2) and 78s(a) (1988).

[5] Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

[6] Securities Exchange Act Release Nos. 27858 (March 28, 1990), 55 FR 12614; 29024 (March 28, 1991), 56 FR 13848; 30537 (April 9, 1992), 57 FR 12351; 32040 (March 23, 1993), 58 FR 16902; 33734 (March 8, 1994), 59 FR 11815; and 35482 (March 13, 1995), 60 FR 14806.

[7] *Supra* note 5.

[8] *Supra* note 2.

[9] Securities Exchange Act Release No. 36790 (January 30, 1996), 61 FR 4507.

[10] Securities Exchange Act Release No. 35574 (April 16, 1995), 60 FR 18866.

[11] The nine operational and procedural changes PTC committed to make included:

(1) eliminating trade reversals from PTC's procedures to cover a participant default;

(2) phasing out the aggregate excess net debit limitation for extensions under the net debit monitoring level procedures;

(3) allowing participants to retrieve securities in the abeyance account and not allowing participants to reverse transfers because customers may not be able to fulfill financial obligations to the participants;

(4) eliminating the deliverer's security interest and replacing it with a substitute;

(5) reexamining PTC's account structure rules to make them consistent with PTC's lien procedures;

(6) making principal and interest advances, now mandatory, optional;

(7) expanding and diversifying PTC's lines of credit;

(8) assuring operational integrity by developing and constructing a back-up facility; and

(9) reviewing PTC rules and procedures for consistency with current operations.

[12] Securities Exchange Act Release No. 36711 (January 11, 1996), 61 FR 1809.

[13] *Supra note 11.*

[14] 15 U.S.C. § 78q–1(b)(3) (1988).

[15] 15 U.S.C. § 78q–1(b) (1988).

[16] 17 CFR 200.30–3(a)(50) (1995).

Jonathan G. Katz,
Secretary.
[FR Doc. 96–7843 Filed 3–29–96; 8:45 am]
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[Release No. 34–37013; File No. SR-Amex-95–54]

Self-Regulatory Organizations; the American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Restrictions on Specialists

March 22, 1996.

I. Introduction

On December 19, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rules 190 and 950 regarding restrictions on specialists.

The proposed rule change was published for comment in Securities Exchange Act Release No. 36726 (Jan. 17, 1996), 64 FR 1953 (Jan. 24, 1996). No comments were received on the proposal.

II. Background

The Amex adopted most of its restrictions on the activities of specialists in the early 1960s. The effect of these restrictions was to limit the business activities of specialists (and their affiliates) to acting as a ''broker's broker'' and as a dealer on the Exchange Floor. These restrictions also precluded specialists from making public statements regarding their specialty securities. In 1973, the Exchange added a commentary on the public statement restriction, prohibiting specialists from making, ''an advertisement identifying a firm as a specialist in any security.'' [3] Even though the New York Stock Exchange (''NYSE'') and Amex generally have comparable rules with respect to restrictions on specialists, the NYSE never adopted the 1973 commentary.

In 1975, with the implementation of trading in standardized options, the Exchange generally extended the restriction on stock specialists to options specialists. It modified, however, the prohibition on business transactions between specialists and the issuer of a specialty security (Rule 190(a)), to prohibit material business transactions between an options specialist and the issuer of the security underlying a specialty option (Rule 950(k)).[4]

In 1987, the Chicago Board Options Exchange (''CBOE'') instituted its Designated Primary Market-Maker (''DPM'') system for trading listed options.[5] While the CBOE adopted a number of the restrictions applicable to Amex options specialists, it did not apply any of the restrictions applicable to Amex specialist communications to its DPMs.[6]

The discrepancy between the rules of the Amex and the CBOE regarding specialist communications had little practical significance prior to the general implementation of multiple options trading. The Exchange is now finding, however, that the disparate regulation of specialists and DPMs has placed it at a disadvantage in the competition for order flow in a multiple trading environment.

III. Description of Proposal

The Amex, accordingly, proposes to amend its rules to lift the prohibition against ''popularizing'' an option or a derivative security. It will leave in place the restriction against popularizing the underlying security, subject to the exceptions that have long been contained in Amex Rule 950. This will better conform the Amex rules to those applicable to DPMs at the CBOE regarding communications concerning specialty securities.

In addition, the Exchange is also proposing two other changes to the restrictions on popularizing by specialists. The Exchange seeks to conform its rules to those of the NYSE to eliminate generally the prohibition on communications that simply identify a firm as the specialist in a particular security. Finally, the Exchange seeks to amend its rules regarding equity derivative [7] specialists to harmonize them with restrictions on options specialists. Thus, the Exchange would amend its rules to prohibit material business transactions between certain equity derivative specialists and the issuer of the security underlying the equity derivative.[8]

All options specialists would remain subject to the rules regulating the conduct and public communications of members generally (*e.g.* Exchange Rule 991, the ''options advertising'' rule). In addition, all other restrictions applicable to specialists and their affiliates would remain in place. Thus, specialists and their affiliates still would be prohibited from trading a specialist security outside the specialist function (Rules 170(e) and 950(n)), holding or granting an option on a specialty stock (Rule 175), engaging in a material business transaction with either the issuer of a specialty security or the underlying security in the case of options (Rules 190(a) and 950(k)), and accepting orders from the issuer of a specialty security, its insiders and enumerated institutional investors (Rules 190(b) and 950(k)).[9]

The Exchange represents that the respective proposed rule changes either seek to conform the Exchange's rules to those of the CBOE and NYSE, or represent a rational harmonization of the regulation of listed options and equity derivatives. In addition, the Exchange believes that changes in market structure, the rule of the specialist in the secondary market, and enhanced surveillance capabilities over the last thirty years have eliminated the need for continuation of at least certain of the original specialist prohibitions. this is most clearly true with respect to the wholesale application of the restrictions on stock specialists to options specialists, due to the derivative pricing of the specialty securities. This is most clearly demonstrated by the experience of the CBOE, which has been able to adequately regulate its DPMs without the use of such wholesale restrictions. Finally, the Exchange

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Commentary to Amex Rule 190.

[4] Since the Options Clearing Corporation (''OCC'') is the issuer of all listed options and the ''business transaction'' prohibition was intended as a prophylactic measure to prevent the passage of non-public information between specialist and issuer, the policy reason behind Rule 190(a) would not have been advanced had the Exchange simply prohibited business transactions between the OCC and an options specialist.

[5] Like a specialist, a DPM has primary market making responsibilities.

[6] *See* CBOE Rules 8.80 and 8.81, and Securities Exchange Act Release Nos. 24934 (September 22, 1987), 52 FR 36122 (September 25, 1987) and 25151 (November 23, 1987), 52 FR 45417 (November 27, 1987). The CBOE's rules provide that an integrated broker-dealer affiliated with a DPM must establish an exchange approved ''Chinese Wall'' between the upstairs firm and the DPM and make certain disclosures if it intends to issue recommendations or research reports regarding DPM securities and the underlying. There are no specific restrictions, however, on DPM communications regarding their speciality securities.

[7] The term ''equity derivative'' refers to an underwritten security the value of which is determined by reference to another security, or to a currency, commodity, interest rate or index of the foregoing. Such securities are commonly listed pursuant to Amex Company Guide (''Guide'') Sections 106 (''Index and Currency Warrants''), 107 (''Other Securities''), 118 (''Investment Trusts''), or Amex Rule 1002 (''Portfolio Depositary Receipts'').

[8] It is in the case of listings under Sections 107 and 118A of the Guide that the underlying can be a single security, so that restrictions analogous to those applicable to equity options are appropriate.

[9] Exchange Rule 193 permits the affiliates of specialists to obtain an exemption from most specialist restrictions through the use of an Exchange-approved ''Chinese wall''.

believes that the experience of the NYSE demonstrates that with respect to all specialists there is no need to go so far as to preclude even the public identification of a particular firm as the specialist in particular securities.

IV. Discussion

The Commission finds that the Amex's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] In particular, and for the reasons set forth below, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general to protect investors and the public interest.[11] The proposal also is consistent with the Section 6(b)(8) requirement that an Exchange have rules that do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[12]

The Commission believes that the Amex's proposal to lift the prohibition against ''popularizing'' an option or equity derivative security and to lift the prohibition that prevents an equity or options specialist from identifying itself as a specialist in its assigned securities is appropriate and will make the Amex's rules consistent with those that are applicable on other exchanges.

The Commission believes that Amex's rules relating to dealings and communications by specialists with regard to their speciality securities (and in the case of options or equity derivatives specialists, the underlying securities related to their speciality securities), continue to adequately address and prohibit inappropriate conduct in this area. Notably, the Amex will leave in place the restriction against popularizing the underlying security, subject to the exceptions contained in Amex Rule 950. Moreover, all options specialists will remain subject to the rules regulating the conduct and public communications of members generally (*e.g.* Exchange Rule 991, the ''options advertising'' rule). In addition, all other restrictions applicable to specialists and their affiliates will remain in place. Thus, specialists and their affiliates still will be prohibited from trading a specialist security outside the specialist function (Rules 170(e) and 950(n)), holding or granting an option on a specialty stock (Rule 175), engaging in a material business transaction with either the issuer of a speciality security or the underlying security in the case of options (Rules 190(a) and 950(k)), and accepting orders from the issuer of a specialty security, its insiders and enumerated institutional investors (Rules 190(b) and 950(k)).[13]

The Commission also believes that the established restrictions on material business transactions entered into by an equity derivative specialist and the issuer of the security underlying the equity derivative are reasonably designed to prevent a potential conflict of interest.[14]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Amex–95–54) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7798 Filed 3–29–96; 8:45 am]

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[10] 15 U.S.C. § 78f(b).

[11] 15 U.S.C. § 78f(b)(5).

[12] 15 U.S.C. § 78f(b)(8).

[13] Exchange Rule 193 permits the affiliates of specialists to obtain an exemption from most specialist restrictions through the use of an Exchange-approved ''Chinese wall.''

[14] Absent these restrictions, a conflict of interest could arise between the equity derivative specialist's market making obligations and any status he or she might attain through business dealings with the issuer or an officer, director, or 10% stockholder of any such company. The Commission recognizes that certain business transactions between equity derivative specialists and issuers may exert an improper influence over equity derivative specialists. The Commission believes, however, that a specialist may engage in certain nonmaterial business dealings with an issuer that would not give rise to the potential conflict of interest described above.

[15] 15 U.S.C. § 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[Release No. 34–37025; File No. SR–BSE–96–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Incorporated Relating to Distribution of Interim Reports to Both Registered and Beneficial Shareholders

March 26, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on March 18, 1996, the Boston Stock Exchange, Incorporated (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its rules to provide that corporations that distribute interim financial reports to shareholders should distribute such reports to both registered and beneficial shareholders. The text of the proposed rule change is available at the Exchange and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to ensure equal treatment of record and beneficial shareholders in the distribution of interim financial reports. It is based on the findings and recommendations of the Securities Industry Association.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–96–02 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[1] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public.

Although the Commission does not require public companies to distribute interim reports to shareholders,[2] the Commission believes that it is appropriate for the Exchange to encourage its listed companies to provide equal treatment of record and beneficial shareholders in the distribution of reports. Moreover, the BSE's rule change reflects the results of the compromise reached by various industry groups with regard to distribution of interim reports. The Commission believes the BSE's adoption of this industry policy should help create uniformity in the practices of BSE-listed companies with respect to their distribution of interim financial reports.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval is appropriate given the prior approval of similar proposals by the NYSE, Amex, and the PSE[3] and because the accelerated approval will allow the Exchange to encourage equal distribution of interim reports to record and beneficial shareholders as soon as practicable.

Based on the above, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of the amended proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[4] that the proposed rule change (SR–BSE–96–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7844 Filed 3–29–96; 8:45 am]

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[1] 15 U.S.C. § 78(b).

[2] The interim reports that are the subject of the BSE's rule change are not the quarterly financial reports required to be filed with the Commission on Form 10–Q pursuant to the Commission's authority under Sections 13(a) and 15(d) of the Securities Exchange Act of 1934. *See* 15 U.S.C. §§ 78m(a) and 78o(d) (1988). The reports are voluntarily prepared and published by companies as part of their shareholder relations activities.

[3] *See* Securities Exchange Act Release Nos. 35373 (Feb. 14, 1995), 60 FR 9709 (Feb. 21, 1995); 36541 (Nov. 30, 1995), 60 FR 62921 (Dec. 7, 1995); 36916 (Mar. 4, 1996), 61 FR 9515 (Mar. 8, 1996).

[4] 15 U.S.C. § 78s(b)(2).

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–37023; File No. SR–NYSE–96–01]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Amending Exchange Rule 460.10

March 25, 1996.

I. Introduction

On January 5, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] the proposed rule change, and on February 26, 1996, submitted Amendment No. 1 to the proposed rule change,[3] to amend Exchange Rule 460.10 to modify certain prohibitions on the ownership by specialists of their specialty securities and to amend provisions that limit the business transactions specialists may engage in with the issuers of specialty securities.

The proposed rule change was published for comment in Securities Exchange Act Release No. 36904 (Feb. 28, 1996), 61 FR 8998 (Mar. 6, 1996). No comments were received on the proposal.

II. Background

NYSE Rule 460.10 prohibits a specialist, his or her member organization or any other member, allied member or approved person in such member organization or officer or employee thereof, individually or in the aggregate, from acquiring more than 10% of the outstanding shares of any equity security in which the specialist is registered. In the event the beneficial ownership of such persons, individually or in the aggregate, in any such security exceeds 5% of the outstanding shares of such security, Rule 460.10 also requires the specialist or his or her member organization to report such fact promptly to Market Surveillance. In such event, Market Surveillance may require any of the persons covered by Rule 460.10 to take appropriate action to either dispose of such beneficial ownership or reduce or eliminate his or her interest in the specialist organization, as may be acceptable to the Exchange. Rule 460.10 also prohibits a specialist, his or her member organization or any other member,

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Donald Siemer, Director, Market Surveillance, NYSE to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated February 23, 1996.

allied member, approved person in such member organization or officer or employee from engaging in any business transaction with any company in whose stock the specialist is registered.

III. Description of Proposal

A. Ownership Restrictions

The restrictions on beneficial ownership codified in Rule 460.10 are intended to ensure that a specialist, and persons affiliated therewith, do not enter into a control relationship with an issuer in whose security the specialist is registered, such that the specialist's status as a significant shareholder may create conflicts of interest with respect to his or her affirmative and negative obligations to maintain a fair and orderly market in the security. The Exchange believes that the 10% ownership prohibition of Rule 460.10 as currently in effect is unnecessarily restrictive and applies to certain types of securities that do not give rise to the potential conflict of interest noted above.[4] To remedy this problem, the Exchange is proposing to exempt three types of securities from the 10% ownership prohibition of Rule 460.10.[5]

The first type of securities covered by the proposed amendment are convertible or derivative securities, American or Global Depositary Receipts, or similar instruments, but only to the extent that conversion of any such securities would not result in a position in the common stock exceeding the 10% threshold.

The proposed amendment also would remove the 10% threshold for certain investment companies units (''units''), but again only to the extent redemption of any such security would not result in a position, directly or indirectly, in any equity security in which the specialist is registered exceeding the 10% threshold. To come within the above exemption, the investment company units must be listed pursuant to Section 703.16 of the Exchange's Listed Company Manual.[6] This section sets forth listing standards for units of trading that represent an interest in a registered investment company that is organized either as an open-end management investment company or as a unit investment trust. Under Section 703.16, the investment company would hold directly securities comprising or otherwise based on or representing an interest in an index or portfolio of securities.

Pursuant to Section 703.16, the Commission recently approved the NYSE's proposal to list up to nine series of units in the form of ''CountryBaskets,'' which are based on the open-end management investment company structure and invest directly in a portfolio of securities included in the corresponding Financial Times/Standard & Poor's Actuaries World Index.[7] In that approval order, the Commission also approved the NYSE's request to amend Rule 460.10 to allow a specialist registered in a security issued by an investment company to purchase and redeem the listed security, or securities that can be subdivided or converted into the listed security, from the issuer, as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.[8] In addition to permitting the purchase and redemption of units from the issuer only as appropriate to facilitate the maintenance of a fair and orderly market in the subject security, any purchases or redemptions must be made at the net asset value and on the same terms and conditions as are available to any other investor.[9]

The Exchange believes that specialists may be required to enter into transactions to effect creation or redemption of the units, and that these transactions may result in an ownership of greater than 10% of an issue of units. Given the open-end nature of these entities, in that securities will be issued on a continuous basis, the Exchange believes that the issue of control by a specialist would not be relevant.[10] Finally, as noted above, under the proposal, a specialist would not be able to hold units which, if redeemed, would result in the specialist holding 10% or more of any individual equity security in which he is registered.

The proposed amendment would also exempt from the 10% threshold, but only with Exchange permission, a currency warrant that trades in relationship to the value of an underlying currency or an index warrant that trades in relationship to the value of an underlying index. With respect to these securities, however, the specialist would not be permitted to acquire a position of more than 25% of the issue.

B. Business Transactions

Rule 460.10 also prohibits a specialist, his or her member organization or any other member, allied member, approved person in such member organization or officer or employee from engaging in any business transaction with any company in whose stock the specialist is registered.[11] This prohibition is designed to prevent a potential conflict of interest by helping to ensure that the issuer does not improperly influence the specialist in the performance of his or her market making duties by the provision of goods or services upon advantageous terms. The Exchange proposes to amend this provision to provide that the prohibition shall not apply to the receipt of routine business services, goods, materials, or insurance on generally available terms. Accordingly, the amended rule would permit business dealings between a specialist and an issuer so long as the service or good is routinely available to the public, confers no special status to the recipient beyond that of a consumer, and is generally available on the same terms and conditions.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, specifically, with the requirements of Section 6(b).[12] In particular, and for the reasons set forth below, the Commission believes that the proposal, as amended, is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and is

[4] For example, in its filing the Exchange noted that Rule 460.10 would prohibit a specialist registered in both a warrant and the underlying common stock from holding more than a 10% position in a warrant that is convertible into a much smaller percentage of the common stock.

[5] The proposed rule does not change the requirement that the specialist inform Market Surveillance upon the acquisition of 5% or more of a equity issue in which he or she is registered.

[6] The Exchange recently added Section 703.16 to its Listed Company Manual. *See* Securities Exchange Act Release No. 36923, (Mar. 5, 1996), 61 FR 10410 (Mar. 13, 1996) (order approving File No. SR–NYSE–95–23).

[7] Each CountryBasket is designed to provide investment results that substantially correspond to the price and yield performance of the specific index to which it relates. Accordingly, the weighing of the portfolio securities of each series substantially corresponds to their proportional representation in the relevant index. *Id.* Before the Exchange may list any additional securities pursuant to Section 703.16, it must make an appropriate filing pursuant to Section 19(b) of the Act with the Commission to provide the authorization to effect such listings. *Id.*

[8] *Id.*

[9] Additionally, so-called Creation Transactions, must occur through the principal underwriter or distributor and not directly with the issuer. *Id.*

[10] *See* note 6, *infra.*

[11] Under certain circumstances, NYSE Rule 98 affords exemptive relief to approved persons of a specialist organization from restrictions found in various NYSE rules, including certain provisions of NYSE Rule 460. *See* Securities Exchange Act Release No. 36043 (Aug. 1, 1995), 60 FR 35759 (Aug. 7, 1995) (order approving File No. NYSE–95–21).

[12] 15 U.S.C. § 78f(b).

consistent with the protection of investors and the public and with the maintenance of fair and orderly markets.[13]

A. Ownership Restrictions

The established restrictions on ownership of equity securities codified in the NYSE's Rule 460.10 prohibit a specialist, and persons affiliated therewith, from owning more than 10% of the outstanding shares of any equity security in which the specialist is registered. This prohibition is based upon a concern that such a large ownership interest may give rise to a control relationship between the specialist and the issuer that may detract from the specialist's willingness or ability to carry out his or her affirmative and negative obligations to maintain a fair and orderly market in the security. The Commission supports this established restriction and believes that it helps to ensure the specialist's integrity in carrying out his or her obligations. Nevertheless, the Commission acknowledges that, with regard to certain securities, a specialist's position in excess of 10% of the outstanding shares of an equity security may not result in a relationship between the specialist and the issuer that warrants the application of the 10% ownership restriction of Rule 460.10.

The proposal would allow a specialist to hold a position in excess of the 10% threshold in three different types of securities. First, the proposal would exempt from the 10% threshold, a specialist's interests in convertible or derivative securities, including American Depositary Receipts and Global Depositary Receipts, provided that, upon conversion, the position in the underlying common stock does not exceed 10% of an issue in which the specialist is registered. As to such securities, the Commission believes that this change is appropriate because the rule will still ensure that specialists cannot control more than 10% of the underlying issue in which the specialist is registered.

Second, the proposal would allow a specialist to hold a position in excess of the 10% threshold for certain investment company units, provided that the redemption of such units would not result in a position, directly or indirectly, in any security in which the specialist is registered exceeding the 10% threshold. To come within the above exemption, the investment company units must be list pursuant to Section 703.16 of the Exchange's Listed Company Manual. This section sets forth listing standards for units of trading that represent an interest in a registered investment company that is organized either as an open-end management investment company or as a unit investment trust. Under Section 703.16, the investment company would hold directly securities comprising or otherwise based on or representing an interest in an index or portfolio of securities.

As noted earlier, in the case of such securities the specialist would be allowed to purchase or redeem any such security from the issuer only as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.[14] In addition, any such purchase or redemption would have to be made at the net asset value and on the same terms and conditions as are available to any other investor.

Based upon the foregoing restrictions, the fact that the securities will be issued on a continuous basis, and the continued restriction on the specialist holding such units which, upon redemption, would result in a position in any security in which the specialist is registered exceeding the 10% threshold, the Commission believes that the amendment of Rule 460.10 to exempt such securities from the 10% ownership threshold is appropriate.[15]

Lastly, the proposal would allow a specialist, with Exchange permission, to exceed the 10% threshold in a security such as a foreign currency warrant, which trades in relationship to the value of an underlying currency, or an index warrant, which trades in relationship to the value of an underlying index. As to these securities, however, the proposal, as amended, still would prohibit a specialist from acquiring a position of more than 25% of the issue.

Based upon the fact that the specialist must receive the permission of the Exchange in order to exceed the 10% threshold and that in any event the specialist cannot exceed a 25% threshold, the Commission believes that the exemption of the above described securities from the 10% ownership threshold of Rule 460.10 is appropriate. The Commission believes that this exemption is appropriate for foreign currency warrants, because, with the limitations noted, no control relationship is likely to arise with regard to the underlying foreign currency. The Commission also believes that such a relationship is unlikely to arise with regard to an index warrant, at least where the index is sufficiently broad based so that one or a few securities do not dominate the index.[16] The Commission believes that narrow based index warrants, however, could potentially give rise to the conflict of interest that the 10% ownership threshold is designed to address, especially in those situations where the specialist is registered in an equity security that represents a significant weight of the index value. Accordingly, the Commission would expect the Exchange to carefully scrutinize requests to exceed the 10% threshold in such index warrants and to grant permission to exceed the 10% threshold only where such permission is clearly necessary to the Specialist's market making duties and such interest does not present the type of concern addressed by Rule 460.10.

Finally, in approving these exceptions to the 10% ownership threshold, the Commission is also relying upon the continuing provision of Rule 460.10 that requires the specialist to report promptly to Market Surveillance any beneficial ownership by the specialist, and persons affiliated therewith, in any specialty security that, individually or in the aggregate, exceeds 5% of the outstanding shares of such security. The Commission expects the Exchange to pay particular attention to such reports and, as appropriate, to use its authority under Rule 460.10 to require that appropriate action be promptly taken to dispose of such beneficial ownership or to reduce or eliminate the beneficial owner's interest in the specialist organization.[17] Moreover, the Commission notes that, notwithstanding the easing of the prohibition of Rule 460.10 on owning more than 10% of a speciality security, all transactions by specialists remain subject to NYSE Rule 104 and the requirement that specialists effect on the Exchange only such transactions in their specialty securities as are reasonably necessary to permit

[13] 15 U.S.C. § 78f(b)(5).

[14] The Commission believes that the Exchange's existing surveillance procedures should be adequate to ensure that such purchases are made only for the purpose of maintaining fair and orderly markets. *See* Securities Exchange Act Release No. 36923, *supra* note 6.

[15] The Commission notes that its approval of the Exchange's proposal to allow specialists to hold a position in excess of 10% in certain investment company units does not address any other applicable requirements or obligations under the federal securities laws. *See* Securities Exchange Act Release No. 36923, *supra* note 6, at note 42 and accompanying text.

[16] As noted below, to the extent a specialist can control up to 25% of a particular warrant issue, with Exchange approval, the Commission notes that such approval should only be given where it is clearly necessary for a specialist to meet his market making obligations under Rule 104.

[17] NYSE Rule 460.10 specifically gives Market Surveillance the authority to require a reduction in specialist positions that equal or exceed 5% of the total outstanding shares of the equity security in which the specialist is registered.

such specialists to maintain fair and orderly markets.

B. Business Transactions

The Commission believes that the general restrictions of Rule 460.10 on business transactions entered into by specialists with companies in whose stock the specialist is registered help ensure that the issuer does not improperly influence the specialist in the performance of his or her market making duties by the provision of goods or services upon advantageous terms. The proposal would exempt specialists from this prohibition as to the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available.

The Commission believes that the NYSE's proposed rule, as amended, is appropriate as it will continue to proscribe business transactions that may give rise to a conflict of interest, while permitting specialists to engage in routine business transactions that do not raise the concerns that the rule is intended to prevent. The proposal limits the type of business transactions in which a specialist may engage with the issuer of a security in which the specialist is registered to those that are available to all other business entities and consumers on the same terms and conditions and that confer no special status to the recipient beyond that of a consumer. The Commission expects the NYSE to interpret this provision narrowly so as to permit business dealings between a specialist and the issuer of a specialty security only where the service or good is routinely available to the public, confers no special status to the recipient beyond that of a consumer, and is on terms and conditions that are generally available.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice of such filing thereof in the Federal Register. The Commission notes that accelerated approval of the proposal is appropriate in order to allow the NYSE to trade CountryBasket securities as set forth in File No. SR–NYSE–95–23 on the anticipated initial trading date of March 25, 1996. Moreover, the Commission notes that the proposal, as amended, was noticed for a period of 16 days, and that no comments were received on the proposal during that period.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSE–96–01), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–7842 Filed 3–29–96; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. § 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C Chapter 35).

DATES: March 26, 1996.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. If you anticipate submitting substantive comments, but find that more than 30 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Judith Street; (202) 267–9895; ABC–100; 800 Independence Avenue SW.; Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the Federal Register, requesting emergency processing for 90 days effective March 25, 1996, in accordance with criteria set forth in that Act, for FAA Acquisition Management System Format, 2120-####. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection request was submitted to OMB on March 25, 1996:

1. OMB No: 2120-xxxx

Administration: Federal Aviation Administration (FAA).

Title: FAA Acquisition Management System (FAAAMS).

Need for Information: Pursuant to Section 348 of Public Law 104–50, the FAA hereby develops and implements a new acquisition management system that addressees the unique needs of the agency.

Proposed Use of Information: The information is necessary for the FAA acquisition organization to plan and conduct acquisition of varying types (supplies, services, real estate, etc.), including establishing contracts and monitoring contractor compliance. This information collection is pursuant to all precepts of OMB Circular A–109, Major System Acquisition and Public Law 104–50 ''Making Appropriations for the Department of Transportation and Agencies'', Section 348.

Frequency: On occasion, monthly, annually.

Burden Estimate: 333,292 hours.

Respondents: Individual or households, Business or other for profit, not-for-profit institutions, Federal Government

Number of Respondents: 3,338.

Form(s): one.

Phillip Leach,

Computer Specialist, Information Resource Management (IRM) Strategies Division.

[FR Doc. 96–7827 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–13–P

Federal Highway Administration

[FHWA Docket No. 94–29]

Exemption Criteria Policy for Highway Sanctions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final policy statement.

SUMMARY: The purpose of this notice is to establish a policy concerning exemption criteria used to determine which projects could advance if the Environmental Protection Agency (EPA) imposes highway sanctions in accordance with section 179(a) or section 110(m) of the Clean Air Act

(CAA) and applicable EPA regulations. These exemption criteria define the requirements which establish the basis for project exemptions, and describe and clarify the types of projects and programs that are exempt during highway sanctions.

EFFECTIVE DATE: March 11, 1996.

ADDRESSES: Materials relevant to this final notice are contained in Docket No. 94–29, FHWA, Room 4232, HCC–10, Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. The docket may be viewed between the hours of 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Kirk D. Fauver, Office of Environment and Planning, (202) 366–2079, or Mr. Reid Alsop, Office of Chief Counsel, (202) 366–1371, FHWA. Office hours are from 7:45 a.m. to 4:15 p.m., et., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This final notice on the exemption criteria for highway sanctions provides clarifications regarding the types of projects (''exempt projects'') listed in section 179(b)(1) of the Clean Air Act (CAA) as amended in 1990 (42 U.S.C. 7509(b)(1)), that may continue to advance while an area is subject to highway funding sanctions. Under section 179(b) and section 110(m) of the CAA, the EPA Administrator may impose a prohibition on project approvals and grants made under title 23, United States Code, by the Secretary of Transportation (''highway sanctions''). The descriptions of exempt projects contained within this document would apply to sanctions applied under section 179(a) (''mandatory sanctions'') or section 110(m) (''discretionary sanctions''). Section 110(m) contemplates circumstances under which EPA may extend highway sanctions to areas not designated as ''nonattainment''. Hence, the information contained in this final notice applies to attainment, nonattainment, and unclassifiable areas. As of this date EPA has published two final rules related to sanctions. The first was published on January 11, 1994, entitled ''Criteria for Exercising Discretionary Sanctions Under Title I of the Clean Air Act'' (59 FR 1476; 40 CFR Part 52). It establishes the criteria to guide EPA's decision on whether, in a specific circumstance, to impose discretionary sanctions on a statewide basis under section 110(m).

A second regulation, ''Selection of Sequence of Mandatory Sanctions for Findings Made Pursuant to Section 179 of the Clean Air Act,'' was published on August 4, 1994 (59 FR 39832; 40 CFR Part 52). This regulation establishes that, following section 179(a) findings, the 2-to-1 offset sanction on new or modified major stationary sources applies first, 18 months after the finding (except where EPA reverses the order through a separate rulemaking), unless EPA has determined that the State corrected the deficiency that prompted the finding. Highway sanctions apply second, six months after application of the offset sanction, unless EPA has determined that the State corrected the deficiency that prompted the finding.

Thos two final rules (with this final notice on exemption criteria) effectively supersede the joint DOT/EPA notice of April 10, 1980 (45 FR 24692), ''Federal Assistance Limitation Required by section 176(a) of the Clean Air Act.'' The EPA also expect to publish another regulation sometime in the future that would establish the sequence of sanctions applied under section 502(d)(2)(B) of the Clean Air Act relating to the EPA's permit program.

Preamble to the Final Criteria Policy Notice

The outline for the contents of the preamble to the final criteria policy notice is as follows:

I. Requirements which Establish the Basis for Highway Sanction Exemptions
II. General
III. Discussion of Comments Received by FHWA on Proposed Exemption Criteria
  A. Stand-alone Environmental Projects
  B. High Occupancy Vehicle (HOV) Exemptions
  C. Maintenance Projects
  D. Project Development Actions under the National Environmental Policy Act (NEPA)
  E. Exemptions for Congestion Mitigation and Air Quality Improvement (CMAQ) Projects and Programs
  F. Safety
  G. Transportation Planning and Research Activities
  H. Use of Supporting Data From Transportation Management Systems
  I. Improved Streamlining
  J. FHWA's Response to Other Comments Received
IV. Safety Program/Project Requirements Under 23 U.S.C.

I. Requirements Which Establish the Basis for Highway Sanction Exemptions

Under Section 179(b)(1) of the CAA, the Secretary of Transportation (as delegated to the FHWA) may make certain project approvals and award grants, even while the nonattainment area or State is under highway sanctions. As stated in section 179(b)(1) of the CAA, safety projects could go forward provided the Secretary of Transportation determines that, based on accident or other data, the principal purpose of the project is an improvement in safety to resolve a demonstrated problem and will likely result in a significant reduction or avoidance of accidents.

In addition to safety projects, section 179(b)(1) specifically exempts seven activities from highway sanctions (See ''Congressionally Authorized Activities'' of this final notice). Projects that the EPA Administrator, in consultation with the Secretary of Transportation, determines would contribute to air quality improvement and would not encourage single occupancy vehicle (SOV) capacity also are exempted. Programs and projects which are allowed to go forward under section 179(b)(1) should strive to alleviate emissions and congestion problems.

II. General

This preamble discusses the comments received during the 60-day public comment period, provides FHWA's responses to these comments, and indicates how resulting changes were incorporated in the final exemption criteria (originally proposed via 60 FR 34315). The exemption criteria notice clarifies and establishes types of highway projects which are exempt (or ''categorically exempt'') from highway sanctions. Categorical exemptions are title 23-funded or approved transportation projects that do not need additional information or documentation to justify them as being ''exempt'' during section 179(a) or 110(m) CAA highway sanctions. Also, other ''exempt'' title 23-funded or approved transportation projects are identified in this final notice. These ''exempt'' transportation projects, although not deemed ''categorically exempt'', could be allowed to move forward (with additional justification and data provided by the state) in the event of highway sanctions. Categorically exempt projects were designated under this final notice because EPA and DOT have determined that such projects either will improve air quality and not encourage single occupancy vehicle (SOV) capacity or are statutorily exempt under section 179(b) of the CAA.

The final exemption criteria also recognize the respective roles and responsibilities of the FHWA (in consultation with the EPA) in applying funding and program/approval limitations under section 179(b)(1), when a highway sanction is imposed by EPA under section 179(a) or section 110(m) of the CAA.

The final exemption criteria are applicable nationwide. Although the FHWA will consult with EPA to determine whether projects meet the exemption criteria, the final authority to determine whether a project is exempt from highway sanctions, under the safety exemption and other specific statutory exemptions, is the sole responsibility of the Secretary of Transportation (as delegated to the FHWA). Other transportation-related projects, not covered under the aforementioned specific exemptions, may be exempted if the EPA Administrator, in consultation with the Secretary of Transportation, finds that they will improve air quality and not encourage SOV capacity under section 179(b)(1)(B)(viii) of the CAA.

III. Discussion of Comments Received by FHWA on Proposed Exemption Criteria

The following section discusses the significant comments received by the FHWA in response to the proposed policy on the exemption criteria published on June 30, 1995 (60 FR 34315) and FHWA's response to the comments. Twenty one (21) comments on the proposed exemption criteria were received by FHWA. The comments received by FHWA were sent by metropolitan planning officials, state departments of transportation, environmental advocates, highway safety advocates, county commissioners, and one from a governor's office. Issues ranged from providing categorical exemptions for ''stand-alone'' environmental actions, to providing additional exemptions for actions not originally considered as part of the proposed exemption criteria.

A. Stand-Alone Environmental Projects

The proposed policy statement on exemption criteria requested comment on eight ''stand-alone'' projects which are likely to have ''de minimis'' environmental or environmentally beneficial impacts. These eight ''stand-alone'' projects are not specifically exempt from sanctions by the CAA. These projects may improve water quality, mitigate wetland impacts, provide landscaping, preserve historic structures, reduce noise, and have other aesthetic benefits. While the proposed policy statement did not exempt these projects, FHWA requested comment as to whether the following types of projects should be exempt from highway sanctions because of their ''de minimis'' impact on air quality. These actions are typically exempted from the CAA transportation conformity requirements (see 40 CFR sections 51.460 and 93.134). Commenters were requested to include a discussion of the basis for their position in favor of, or against, such an exemption. The projects for which exemption status was being considered included:

1. Wetland mitigation;
2. Planting trees, shrubs, wildflowers;
3. Landscaping;
4. Purchase of scenic easements;
5. Billboard and other sign removal;
6. Historic preservation;
7. Transportation enhancements;
8. Noise abatement.

Comments Received by FHWA

Many of the commenters (in response to the proposed exemption criteria) noted that the stand-alone projects listed above have little or no impact on increasing vehicle-miles-traveled (VMT), nor can they be associated with encouraging SOV capacity. Of the twenty one (21) comments received, thirteen (13) expressed support for including these types of ''stand-alone'' projects as categorically exempt from highway funding sanctions. There were no comments received by FHWA that were opposed to exempting these projects.

Some of the commenters noted that these ''stand-alone'' projects actually improve or enhance the environment and have minimal or sometimes even positive impacts on the ambient air quality. In addition, one commenter stated that these types of projects constituted only 0.7 percent of their total state highway program. With the percentage of these types of actions so small, the commenter also added that the exclusion of these projects would not contribute significantly to the purpose of highway sanctions under Section 179(a) or 110(m) of the CAA. Additionally, the other potential environmental benefits of these ''stand-alone'' projects would not be realized if they were halted during a possible highway funding sanction scenario.

FHWA's Response to Comments

The FHWA has considered the comments received. The final exemption criteria generally exempt these ''stand alone'' projects from highway sanctions for several reasons. The significance of these projects, both in terms of impacts on air quality and in terms of highway program expenditures is ''de minimis'', as noted in the comments above, hence they would not add significantly to any punitive aspect of highway sanctions. In addition, such projects advance identifiable environmental or aesthetic goals and do not encourage increases in SOV capacity. Finally, these types of projects were generally exempted from the conformity requirements of section 176(c) of the CAA by the regulations implementing section 176(c) (see EPA's Final Rule on Transportation Conformity, 40 CFR sections 51.460 and 93.134) because these projects have no emissions impact, and were considered to be neutral or ''de minimis''.

However, consistent with the exemptions contained in the conformity regulations, the transportation enhancement activities (TEA) associated with the rehabilitation and operation of historic transportation buildings, structures, or facilities are not categorically exempted since such activities may, in some cases, have adverse impacts on air quality and may increase VMT.

A majority of the commenters suggested that flexibility be provided to allow other typically ''non-exempt'' projects, listed in section B (60 FR 34318) of the proposed exemption policy criteria, to be categorically exempt. However, as these projects could lead to expanded single occupant vehicle capacity, the FHWA believes that they can not be considered categorically ''exempt'' under the exemption criteria.

B. High Occupancy Vehicle (HOV) Exemptions

The proposed exemption criteria provided categorical exemptions for the construction of new HOV lanes (only if those lanes were solely dedicated as 24-hour HOV facilities), and the conversion of existing lanes for HOV use during peak hours.

Comments Received by FHWA

Comments were received by the FHWA on the issue of providing exemptions for all HOV lanes, regardless of time-of-day restrictions (whether 24-hour or peak hour HOVs). One of the commenters noted that the exemption for HOV facilities presented in the proposed exemption criteria (60 FR 34319) only applied to the construction of 24-hour HOV lanes, and suggested that this restriction is ''inappropriately narrow''. Additionally, the commenter stated that the application of sanctions to HOV lanes (which are open to non-HOV travel during off-peak periods) would only serve to limit the States' ability to develop HOV facilities in a manner receiving broad public acceptance.

FHWA's Response to Comments

Upon further review of section 179(b)(1)(B) of the CAA, the FHWA, in consultation with EPA, has decided to allow categorical exemptions for those

HOV projects described in the proposed criteria (i.e. construction of 24-hour HOV facilities, and the conversion of existing lanes during 24-hour periods). The construction of new 24-hour HOV facilities or the conversion of existing lanes to 24-hour HOV facilities are specifically exempted under this notice, since these actions meet the definition of ''solely for the use of passenger buses or high occupancy vehicles'' per section 179(b)(1)(B)(ii) of the CAA.

Additionally, FHWA and EPA agree that the conversion of existing lanes during peak hours should also be categorically exempt under section 179(b)(1)(B)(viii) of the CAA, because these actions would improve air quality without encouraging SOV capacity. The categorical exemption, regarding the conversion of *existing lanes for HOV use during peak hours,* was originally made under section 179(b)(1)(B)(ii) and described under ''Congressionally Authorized Activities'' of the proposed exemption criteria notice. The categorical exemption for these projects in now made under section 179(b)(1)(B)(viii) of the CAA under ''Air Quality Improvement Programs That Do Not Encourage Single Occupancy Vehicle Capacity'' of the final exemption criteria, since these projects more appropriately meet this exemption criterion.

Other HOV projects, that are not categorically exempt under section 179(b)(1)(B)(ii) of the CAA, may be exempted on a case-by-case basis pursuant to the section entitled ''Air Quality Improvement Programs That Do Not Encourage Single Occupancy Vehicle Capacity'' of the final exemption criteria, per section 179(b)(1)(B)(viii) of the CAA. These categorical exemptions are granted only if the EPA Administrator (in consultation with the Secretary of Transportation) finds that they would improve air quality and would not encourage single occupancy vehicle capacity. In addition, the final exemption criteria also categorically exempt all transportation control measures (TCMs) in an EPA-approved SIP or Federal Implementation Plan which have emission reduction credit and will not encourage SOV capacity (per section 179(b)(1)(B)(viii) of the CAA).

C. Maintenance Projects

The proposed exemption criteria did not provide categorical exemptions for maintenance and rehabilitation projects, unless the projects could be shown to have a principal purpose of improving safety (such as projects from the Highway Safety Improvement Program or the Highway Bridge Replacement and Rehabilitation Program).

Comments Received by FHWA

The FHWA received several comments which proposed that all highway maintenance projects (such as resurfacing, restoration, and rehabilitation) regardless of safety and SOV capacity expansion concerns, be considered ''exempt'' from highway sanctions. These comments requested more flexibility and stated that these actions should be considered exempt, unless ''FHWA can show that air quality well be adversely affected'' by their implementation. Commenters also suggested that repaving and resurfacing projects that may be shown to improve traffic flow and safety be considered ''categorically exempt'' during the highway sanctions, as older deteriorated pavement may add to additional congestion and ultimately lead to air quality problems.

FHWA's Response to Comments

FHWA examined this issue and found that Congress reviewed the possibility of exempting resurfacing, restoration, and rehabilitation (''3–R'') type highway projects during the debates leading toward the development of the 1990 Clean Air Act Amendments. While there was an attempt to include a categorical exemption for such projects this approach was rejected in part because of concerns that a categorical exemption for all ''3–R'' type projects could become a ''huge loophole'' for projects exempted from sanctions under the safety category (Congressional Record; E3700; November 2, 1990). Consequently, ''3–R'' type projects must be reviewed on a case-by-case basis to ensure that each project's principal purpose is safety.

D. Project Development Actions Under the National Environmental Policy Act (NEPA)

The proposed exemption criteria described the extent to which project development actions under NEPA would be considered ''exempt'' from highway sanctions. The proposed criteria stated that project development activities under NEPA may be exempt from highway sanctions only if consideration of ''exempt'' alternatives, such as transit or other transportation demand management (TDM) measures, are actively being considered as reasonable independent alternatives.

Comments Received by FHWA

One commenter stated his support for providing exemptions for NEPA studies (if ''exempt'' project alternatives remain under consideration), because the studies would be considering alternatives that could help the state ultimately attain the national ambient air quality standards (NAAQS). One commenter recommended that added flexibility be provided during the project development process for those project development actions involving ''neutral'' project alternatives (which may not be ''highway-related'') that are not considered to be ''exempt'' under highway sanctions.

FHWA's Response to Comments

The final exemption criteria provide flexibility by allowing a broad range of TDM measures, TCMs in applicable SIPs (which have emissions reduction credit and will not encourage SOV capacity), mass transit, and other ''exempt'' project actions to be advanced as part of project development studies and activities if they meet the criteria of this final notice. The final criteria provide for the continued funding of project development activities during a highway sanctions scenario, as long as project alternatives that would be ''exempt'' under the policy statement are still being considered by the project sponsor. Once all of the project alternatives that could be considered ''exempt'' from highway sanctions are eliminated, then project development activities for NEPA or other purposes (such as MIS development studies) are no longer exempt, and additional project development activities or studies can not be approved or funded under title 23 while highway sanctions are in effect.

E. Exemptions for Congestion Mitigation and Air Quality Improvement (CMAQ) Projects and Programs

Categorical exemptions were not provided for all CMAQ projects in the proposed exemption criteria. Both the proposed and final exemption criteria provide categorical exemptions for all TCMs in approved SIPs or Federal Implementation Plans (FIPs) which have emission reduction credit and will not encourage SOV capacity, and for those CMAQ-funded projects related to inspection and maintenance facilities and activities, as well as bicycle/pedestrian and carpool/vanpool programs. The proposed and final exemption criteria also provide an opportunity for project exemptions upon review of air quality benefits on a case-by-case basis, providing the project meets the criteria under ''Air Quality Improvement Programs That Do Not Encourage Single Occupancy Vehicle Capacity'' of this final notice.

Comments Received by FHWA

There were four comments that supported the full blanket exemption of all CMAQ programs and projects from highway sanctions, since their primary goal (by definition) is to contribute to the attainment of the NAAQS. One commenter stated that the process is redundant and unnecessary, since CMAQ projects can not be authorized unless they conform to the requirements of federal law and regulation. Because FHWA requires a project justification and analysis before authorization of each CMAQ project, the commenter recommended that FHWA grant categorical exemptions for these CMAQ projects in order to avoid duplication of effort and to conserve resources.

FHWA's Response to Comments

The final notice on exemptions does not provide for full blanket CMAQ exemptions. Under the CAA, exempt projects may not encourage SOV capacity, and in some cases there could be potential SOV capacity expansion provided by certain CMAQ-funded projects. As noted, the following four types of projects (which may receive CMAQ funding) are considered to be ''categorically exempt'' and will not require additional review by the EPA or FHWA in the event of highway sanctions:

1. TCMs contained in an EPA-approved SIP (or Federal Implementation Plan which have emission reduction credit and will not encourage SOV capacity);
2. Inspection and maintenance facilities and activities eligible under CMAQ;
3. Bicycle and pedestrian facilities; and
4. Carpool/Vanpool programs.

Other CMAQ projects may be exempted on a case-by-case basis, pursuant to the final exemption criteria, if the project can be shown to improve air quality and not encourage SOV capacity.

F. Safety

The proposed exemption criteria provided for categorical exemptions for several programs which have been established under title 23, U.S.C., expressly for the purpose of addressing safety objectives, either through programs targeted at driver behavior or safety projects intended to remediate structures or facilities, or to prevent loss of human life.

Some of these safety programs will need to provide justification to show that the project is related to safety (unless the project is drawn out of a statewide safety program or is related to the programs administrated by National Highway Traffic Safety Administration (NHTSA)). These ''additional justification'' projects include capital projects involving elimination of safety hazards, emergency relief (ER) projects that involve added capacity, improving safety deficiencies, and other programs such as pavement resurfacing for skid resistance.

Comments Received by FHWA

One of the commenters expressed support for flexibility in determining whether the ''principal purpose'' of a project activity is improving safety. The commenter stated that a ''strict application of a test which requires showing that safety be the 'principal purpose' could preclude projects which have a significant impact on other factors.'' A highway safety advocate expressed strong concern about the designation of ''improvements to, or reconfiguration of, existing interchanges'' as ''non-exempt'' under the section entitled ''Typically Nonexempt Projects''. The commenter suggested that this designation may lead to safety concerns related to the perpetuation of older substandard geometric designs during highway sanctions.

Another commenter stated that the safety program provisions (dealing with exempt actions) were too focused on the NHTSA programs, and not title 23 federal-aid safety programs administered by the FHWA (without NHTSA participation). The commenter suggested that ''FHWA-only'' programs should be included in the exempt criteria.

FHWA Response to Comments

Consistent with section 179(b)(1) of the CAA, the final exemption criteria allow certain exemptions for ''specific'' safety projects and programs, that are not from a statewide safety program, once justification is provided to demonstrate that they improve safety. This data may be derived from accident data drawn out of a safety or bridge management system (under this final notice). Flexibility was provided in both the proposed and final criteria to allow exemptions of ''specific'' safety projects and programs that can be shown to be exempt (on the grounds of safety) based upon national experience. Allowable exemptions for ''specific'' safety projects under the exemption criteria may involve upgrading obsolete geometric designs (for improving limited sight distance), replacement of substandard guardrail, rehabilitation for skid resistance, or address other safety needs and purposes, as outlined in the exemption criteria.

Categorical exemptions of ER projects (which do not involve substantial functional, locational, or capacity changes) are considered important and have been included in the final criteria. Following a catastrophic event such as an earthquake or flood, it would not be in the public interest to require project sponsors to provide additional safety information or data. Therefore, FHWA has agreed to categorically exempt all ER projects which do not involve substantial functional, locational, or capacity changes funded under title 23 in order to provide flexible administrative relief in the event of a natural disaster, civil unrest, or terrorist act. Such projects for the repair of damage that follows such catastrophic events are considered to be ''exempt'' safety projects. It is noted that, for conformity purposes, ER projects are ''exempt'' under the EPA conformity rule if the project does not involve substantial functional, locational, or capacity changes.

Title 23 ER projects discussed in the final notice are authorized expenditures by the Secretary of the DOT, as defined under section 125 of title 23, United States Code (23 U.S.C.). The eligible activities under the ER program include the repair or reconstruction of highways, roads, and trails which the Secretary has found to be seriously damaged as the result of a natural disaster (e.g., floods, hurricanes, tidal waves, earthquakes, severe storms, or landslides, etc.). ER funds cannot be used for purposes of repairing or reconstructing bridges that have been closed to all vehicular traffic by the State or responsible local official due to structural deficiencies, lack of maintenance, or physical deterioration. Provisions for the ER program can be found under 23 CFR part 668.

The proposed exemption criteria did not intend to place stronger emphasis on the exempted NHTSA programs than on the applicable exempt title 23 safety programs and projects funded under the ISTEA (or other title 23 programs). Although specific identification of a highway safety project from an obvious safety-related program such as the Highway Safety Improvement Program or the Hazard Elimination Program (23 U.S.C. 152) was mentioned in the proposed exemption criteria, it was not meant to eliminate other ''exempt'' title 23 safety programs or projects that may be funded under the Surface Transportation Program (STP) or the National Highway System (NHS) or any other ISTEA (or title 23) funded program. Title 23 safety projects, however, must meet the criteria for ''exempt'' status (whether individually

or as part of a statewide program) as defined in the final notice on exemption criteria.

G. Transportation Planning and Research Activities

Comment Received by FHWA

One commenter stated that it was not clear as to whether all transportation research is exempt (because it may in some way benefit air quality or safety) or whether only those research projects that directly benefit air quality or safety are exempt.

FHWA's Response to Comment

As indicated in the proposed notice and carried forth under the final exemption criteria, all transportation planning and research activities are exempt from highway sanctions.

H. Use of Supporting Data From Transportation Management Systems

Section 1034 of the ISTEA amended title 23, United States Code, by adding section 303, Management Systems. Section 303 requires State development, establishment, and implementation of a system for managing each of the following: highway pavement of Federal-aid highways (PMS); bridges on and off Federal-aid highways (BMS); highway safety management system (SMS); traffic congestion (CMS); public transportation facilities and equipment (PTMS); and intermodal transportation facilities and systems (IMS). An interim final rule for these systems was published on December 1, 1993, as 23 CFR part 500.

On July 20, 1995, the FHWA and FTA issued a joint memorandum regarding updated compliance dates for the six management systems. The NHS Designation Act was signed by the President on November 28, 1995 which amended 23 U.S.C. 303(c) to allow States, at any time, to elect to not implement, in whole or part, any one or more of the ISTEA management systems under section 303. However, in accordance with section 134(i)(3) of title 23 United States Code (as amended by the ISTEA of 1991), transportation management areas (TMAs) must include a congestion management system (CMS) as part of their transportation planning process.

The proposed exemption criteria suggested that data generated from bridge management systems or safety management systems could be used to justify exemptions for safety projects and programs in the event of highway sanctions. The preamble of the proposed exemption criteria also discussed the implementation dates required by the interim final rule on the ISTEA management systems issued on December 1, 1993 (as 23 CFR part 500). The National Highway System (NHS) Designation Act of 1995 has made the development and implementation of one or more of the ISTEA management systems optional for the States. However, in accordance with section 134(i)(3) of title 23 United States Code (as amended by the ISTEA of 1991), transportation management areas (TMAs) must include a congestion management system as part of their transportation planning process.

Comments Received by FHWA

In reference to the implementation dates for the six management systems required under the ISTEA legislation (via 23 CFR part 500), three commenters correctly noted that the FHWA and FTA have subsequently published revised deadlines as part of the government-wide regulatory streamlining effort. One commenter suggested that if the output of management systems is going to be used as a basis for determining sanction exemptions, then highway sanctions should only apply to the NHS routes.

FHWA's Response to Comments

The commenters's assumption regarding the application of sanctions to NHS System projects is incorrect as each air basin or region or subregion that is under highway sanctions issued by the EPA under Section 179(a) or 110(m) of the CAAs would be subject to sanctions for all federal-aid title 23 programs and projects (that are not exempt under this exemption criteria), regardless of the facility-type or route designation, within the applicable area or region. The CAA and EPA implementing regulations do not limit highway funding sanctions only to NHS routes or any other facility type funded under the ISTEA (or title 23). Despite the changes to the management system requirements made by the NHS Designation Act, information from the safety or bridge management systems may be used for the purpose of providing data to support safety exemptions under this final criteria notice.

I. Improved Streamlining

One of the more critical comments received was in the area of improved streamlining for project delivery during the highway sanctions period by the DOT and EPA. During a highway sanctions scenario, the State departments of transportation will be responsible for reviewing and forwarding a listing of ''exempt'' highway projects to the FHWA prior to FHWA approval, and the subsequent authorization of title 23 funds. The FHWA will review the State departments' of transportation lists of ''exempt'' programs and projects (in consultation with EPA) and make its determination of exemptions prior to issuing federal approvals or authorizations to proceed. The FHWA will provide the EPA with a 14-day review and comment period prior to federal approval and subsequent authorization of funds.

J. FHWA's Response to Other Comments Received

The FHWA received a few additional comments. They ranged from questions related to the redistribution of title 23 highway funds to unsanctioned areas, general views on VMT growth and air quality trends, and other general discussions unrelated to the proposed or final exemption criteria. Since these comments could not be addressed by FHWA in the scope of the final exemption criteria and were not directly related to (nor influenced) the development of the exemption criteria, the FHWA did not believe it was pertinent to address them as part of this final exemption criteria.

IV. Safety Program/Project Requirements Under 23 U.S.C.

Several programs have been established under title 23, U.S.C., expressly for the purpose of addressing safety objectives, either through programs targeted at driver behavior or safety projects intended to remediate structures, facilities, or prevent loss of human life. These programs include: the Highway Safety Improvement Program as defined under 23 CFR Part 924; the Highway Bridge Replacement and Rehabilitation Program (HBRRP) as defined under 23 CFR Part 650, Subpart D; and grant programs whose principal purpose is to improve safety and which do not include any capital improvements, including all programs established in Chapter I or IV or 23 U.S.C. that are administered by the NHTSA.

Additionally, the Transportation Management and Monitoring Systems defined under 23 CFR Part 500 (58 FR 63475, December 1, 1993) defined requirements for the six management systems and the Traffic Monitoring System. As mentioned earlier, the NHS Designation Act of 1995 made the implementation of the ISTEA management systems optional for the States. The final notice allows States the flexibility to justify the exemptions of safety or bridge projects using data from their own safety or bridge management

systems. This information may be used to supplement existing data or, as it is developed, may improve existing data or information currently available.

Programs or projects stemming from the following provisions could be exempt on the basis of an established safety-related project need meeting section 179(b) requirements. Title 23 of the Code of Federal Regulations sets forth the requirements for eligibility for federal funding for projects under the Highway Safety Improvement Program (23 CFR Part 924) and the HBRRP (23 CFR Part 650 Subpart D) and programs administered by NHTSA (Chapters II and III of 23 CFR).

These programs have been established with the purpose of addressing safety objectives and may be used to establish justification for the safety exemptions under the CAA if the section 179(b) requirements and those of this final notice are fully met.

A. Highway Safety Improvement Program (23 CFR Part 924)

The Highway Safety Improvement Program requires each State to develop and implement a program which has as its goal reducing the number and severity of accidents and decreasing the potential of accidents on all highways. The program is to be continuous and its components consist of planning, implementation, and evaluation of safety programs and projects.

The implementation of the highway safety improvement program is subject to procedures set forth in 23 CFR Part 630, Subpart A, Federal-aid Programs Approval and Project Authorization, and the priorities developed in conjunction with 23 CFR part 924, section 924.9-Planning.

The planning components of the program shall incorporate a process for collecting and maintaining a record of accident data; a process for analyzing available data to identify hazardous locations on the basis of accident experience or accident potential; a process for conducting engineering studies to develop highway safety improvements; and projects considering the potential reduction in the number and severity of accidents.

B. The Highway Bridge Replacement Program (HBRRP)

This program is administered in accordance with 23 U.S.C. 144. Eligible work under this program includes the total replacement of a structurally deficient or functionally obsolete bridge, a nominal amount of approach work sufficient to connect the bridge to the roadway or major work required to restore the structural integrity of a bridge as well as work necessary to correct major safety defects. Bridge projects eligible for funding under the bridge replacement and rehabilitation program must be supported by bridge inventory data and evaluation of the bridge inventory.

Projects are submitted by the State to the FHWA in accordance with 23 CFR part 630, Subpart A, Federal-aid Programs Approval and Authorization. Priority consideration is given to those projects which will remove from service those highway bridges most in danger of failure.

C. Highway Safety Programs Administered by NHTSA

NHTSA administers (independently or cooperatively with other Federal agencies) programs whose principal purpose is to improve highway safety and which do not include any capital improvements. Under these programs, the agency awards either grants, contracts, or cooperative agreements. These programs include, but are not limited to, programs authorized under chapter IV of title 23, U.S.C., such as:

—Section 402, Highway Safety Programs, under which the agency promulgates guidelines and awards grants to States having approved highway safety programs designed to reduce traffic accidents and deaths, injuries and property damage;
—Section 403, Highway Safety Research and Development, under which the agency engages in research on all phases of highway safety and traffic conditions and other related research and development activities which will promote highway safety;
—Section 410, Alcohol Impaired Driving Countermeasures, under which the agency makes grants to States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving under the influence of alcohol or a controlled substance.

NHTSA programs also include, but are not limited to, programs authorized under Chapter I of title 23, U.S.C. such as: Section 153, Use of Safety Belts and Motorcycle Helmets, under which the agency has made grants to States with effective safety belt and motorcycle helmet use laws and under which States may be subject to the transfer of certain highway construction funds to section 402 programs for not having safety belt laws in effect.

The final highway sanction exemption criteria policy is as follows.

Memorandum

U.S. Department of Transportation
Federal Highway Administration
Date:
Reply to Attn of: HEP–40

Subject: Policy for Exemption Criteria to be Used to Determine Which Projects Can Advance if the Environmental Protection Agency Imposes the Highway Funding Sanction Under section 179(a) or 110(m) of the Clean Air Act (CAA), as Amended in 1990.

From: Rodney E. Slater, Federal Highway Administrator.

U.S. Department of Transportation.

To: Regional Federal Highway Administrators; Federal Lands Highway Program Administrator

This policy memorandum defines the exemption criteria that will be used to determine which projects can go forward and which grants can be awarded in the event EPA imposes highway sanctions under section 179(a) or section 110(m) of the CAA. This policy memorandum contains a description of the criteria for exemptions and clarification of the types of projects and programs that are exempt. Projects for which exemptions cannot be granted are also included in this policy memorandum.

General Description

Highway sanctions, when applied, halt the approval of projects and the award of any grants funded under Title 23, United States Code, except as defined in section 179(b) and as clarified by this policy memorandum. This applies to the following major funding programs:

1. Surface Transportation Program (STP).
2. National Highway System.
3. Interstate Maintenance.
4. Bridges.
5. Interstate Construction.
6. Interstate Substitution.
7. Congestion Mitigation and Air Quality Improvement Program (CMAQ).

Projects funded under all other Title 23 programs and other authorizations are also subject to sanctions, including demonstration projects identified by Congress and specified in the ISTEA of 1991 under sections 1103–1108 or in other laws, unless they meet the criteria set forth in this policy memorandum. Additionally, other Title 23 projects to be funded under previously authorized programs (prior to passage of the ISTEA, such as the Federal-aid Urban, Federal-aid Secondary Programs, etc.) may also be subject to certain highway funding restrictions under highway sanctions.

Projects funded under Title 49, U.S.C. chapter 53, the Federal Transit Act, as amended, are categorically exempt from

sanctions by law as are other transportation programs authorized by statutes other than Title 23.

Typical Nonexempt Projects

The following types of projects generally do not meet the exemption criteria in section 179(b)(1) and would not be allowed to be federally funded or approved under Title 23 unless it is demonstrated that they meet one or more of the exemption criteria. These include projects that expand highway or road capacity, nonexempt project development activities, and any other project that does not explicitly meet the criteria in this policy memorandum. These may include activities for:

1. The addition of general purpose through lanes to existing roads.
2. New highway facilities on new locations.
3. New interchanges on existing highways.
4. Improvements to, or reconfiguration of existing interchanges.
5. Additions of new access points to the existing road network.
6. Increasing functional capacity of the facility.
7. Relocating existing highway facilities.
8. Repaving or resurfacing except for safety purposes, as defined by section 179(b).
9. Project development activities, including NEPA documentation and preliminary engineering, right-of-way purchase, equipment purchase, and construction solely for non-exempt projects.
10. Transportation enhancement activities associated with the rehabilitation and operation of historic transportation buildings, structures, or facilities not categorically exempted.

Project Exemptions

Under section 179(b)(1) of the CAA, once EPA imposes highway sanctions, the FHWA may not approve or award any grants in the sanctioned area except those which generally meet the criteria within this memorandum. Congress specifically exempted projects which fall under three categories: (1) safety programs and projects (under section 179(b)(1)(A)); (2) seven congressionally-authorized activities (under section 179(b)(1)(B)(i–vii); and, (3) air quality improvement projects that would not encourage SOV capacity (under section 179(b)(1)(B)(viii) of the CAA). This policy memorandum further interprets and clarifies these statutory exemption provisions.

1. Safety Programs and Projects

Safety projects are those for which the principal purpose is an improvement in safety but the projects may also have other important benefits. These projects must resolve a demonstrated safety problem with the likely result being a significant reduction in or avoidance of accidents as determined by the FHWA. Such demonstration must be supported by accident or other data submitted by the State or appropriate local government.

Four general types of categories of safety-based programs and projects potentially meet the exemption criteria: grant programs and related activities; Emergency Relief (ER) projects; statewide safety improvement programs; and specific projects outside of a statewide safety program. Each category calls for varying levels of justification.

a. Programs administered by NHTSA qualify for blanket exemptions, on the basis that their principal purpose is to improve safety and do not include any capital improvements. Programs that fall within this category include but are not limited to: (1) Use Safety Belts and Motorcycle Helmets (23 U.S.C. 153); (2) Highway Safety Programs (23 U.S.C. 402); (3) Highway Safety Research and Development (23 U.S.C. 403); and (4) Alcohol-Impaired Driving Countermeasures (23 U.S.C. 410).

b. ER projects funded by Title 23 to repair facilities damaged or destroyed by natural disasters, civil unrest, or terrorist acts are exempt without further justification, provided that such projects do not involve substantial functional, locational, or capacity changes.

c. Statewide safety improvement programs include specific safety projects that can be justified on the basis of State or national level data, which will be additionally supported by data and analysis stemming from the State (or ISTEA) management system requirements once the systems are fully operational. Projects meeting this exemption category would come out of the Highway Safety Improvement Program (23 CFR Part 924) and the Highway Bridge Replacement and Rehabilitation Program (23 CFR Part 650, Subpart D). The Highway Safety Improvement Program also includes the Hazard Elimination Program (23 U.S.C. 152).

d. Specific projects for which justification is needed to show that the project is related to safety, unless the project is drawn out of a statewide safety program and would be likely to reduce accidents, would include capital projects such as:

—Elimination of, and safety features for, railroad-highway grade crossings.
—Changes in vertical or horizontal alignment.
—Increasing sight distance.
—Elimination of high hazard locations or roadside obstacles.
—Shoulder improvements, widening narrow pavements.
—Adding or upgrading guardrail, medians and barriers, crash cushions, fencing.
—Pavement resurfacing or rehabilitation to improve skid resistance.
—Replacement or rehabilitation of unsafe bridges.
—Safety roadside rest areas, truck size and weight inspection stations.
—Addition and upgrading of traffic control devices, (traffic signals, signs, and pavement markings).
—Lighting improvements.
—Truck climbing lanes.

Justification for an exemption on the grounds of safety must be based on accident or other data such as the data derived from a State's safety and bridge management system, the Highway Safety Improvement Program, or the Highway Bridge Replacement and Rehabilitation Program. Such data need not be specific to the proposed project's location, but may be based on accident or other data from similar conditions, including national experience where such projects have been implemented to remove safety hazards. For example, rigid highway sign posts were identified in the past as a safety hazard causing unnecessary deaths and injuries. The identification of this hazard led to national policy requiring rigid posts to be replaced with breakaway poles.

Projects exempted under the safety provision may not involve substantial functional (such as upgrading major arterial to freeways), locational, or capacity changes except when the safety problem could not otherwise be solved.

2. Congressionally Authorized Activities

Seven project types are identified specifically in the CAA section 179(b)(1) as exempt from highway sanctions. Essentially, these are projects that generally do not result in increased SOV capacity, or improve traffic flow (e.g., intersection improvements or turning lanes) in ways that reduce congestion and emissions:

a. Capital programs for public transit. These include any capital investment for new construction, rehabilitation, replacement, or reconstruction of facilities and acquisition of vehicles and equipment.

b. Construction or restriction of certain roads or lanes solely for the use of passenger buses or High Occupancy Vehicles (HOV). Exempt projects include construction of (or conversion of existing lanes to) new HOV lanes, if

those lanes are solely dedicated as 24-hour HOV facilities.

c. Planning for requirements for employers to reduce employee work-trip related vehicle emissions. This includes promotional and other activities associated with this type of program that are eligible under Title 23.

d. Highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a new emission reduction.

e. Fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations (this includes the construction of new facilities and the maintenance of existing facilities).

f. Programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration, particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs. Exempt projects include all activities of these types that are eligible under existing funding programs.

g. Programs for breakdown and accident scene management, non-recurring congestion, and vehicle information systems, to reduce congestion and emissions.

The FHWA will consult with EPA on any project claimed to reduce emissions (e.g., with projects falling under paragraphs c, d, and g, above). However, the final authority to determine whether a project meets the criteria in this memorandum and is exempt from highway sanctions rests with the FHWA.

3. Air Quality Improvement Programs That Do Not Encourage Single Occupant Vehicle (SOV) Capacity

Transportation programs not otherwise exempt that improve air quality and which would not encourage SOV capacity (as determined by EPA in consultation with DOT) are also exempt from highway sanctions. For example, projects listed in section 108(f) of the CAA and projects funded under 23 U.S.C. 149, the CMAQ program, are projects which EPA and DOT may, after individual review of each project, find to be exempt from highway sanctions. For these projects to advance while highway sanctions are in place, the State must submit to DOT an emissions reduction analysis similar to that required under the CMAQ program. Upon receipt, DOT will forward it to EPA. The EPA will complete its review and make its finding regarding air quality and SOV capacity within 14 days of receipt of such information.

The EPA and DOT have agreed that the following projects will be categorically exempt from highway sanctions, and will not require additional EPA review or an individual finding by EPA:

a. The TCMs contained in an EPA-approved State Implementation Plan or Federal Implementation Plan which have emission reduction credit and will not encourage SOV capacity.

b. Inspection and maintenance facilities and activities eligible for CMAQ funding.

c. Bicycle and pedestrian facilities and programs.

d. Carpool/Vanpool programs.

e. Conversion of existing lanes for HOV use during peak hour periods, including capital costs necessary to restrict existing lanes (barriers, striping, signage, etc.).

In considering exempt projects, States should seek to ensure adequate access to downtown and other commercial and residential areas, and should strive to avoid increasing or relocating emissions and congestion.

4. Projects That Have a ''De Minimis'' Air Quality Impact and Provide Other Environmental or Aesthetic Benefits

The following projects are likely to have ''de minimis'' environmental or environmentally beneficial impacts, provide other aesthetic benefits, do not promote SOV capacity, and are, therefore considered exempt from highway sanctions:

a. Wetland Mitigation.

b. Planting Trees, Shrubs, Wildflowers.

c. Landscaping.

d. Purchase of Scenic Easements.

e. Billboard and Other Sign Removal.

f. Historic Preservation.

g. Transportation Enhancement Activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).

h. Noise Abatement.

Planning and Research Activities

Planning and research activities for transportation and/or air quality purposes are exempt from highway sanctions (except as noted in the Project Development Activities section). Such planning and research is critical for the development of projects that improve safety and address an area's transportation/air quality needs. Planning and research activities may include development of an Environmental Impact Study or Environmental Assessment (under NEPA) in conjunction with a major investment study. Major investment studies are planning studies which normally take a multimodal approach in considering transportation alternatives, and are therefore exempt from sanctions under this criteria.

Research activities also include those research, development, testing, and planning projects involving the National Intelligent Transportation Systems (ITS) Program funded by part B of Title 6 of the 1991 ISTEA. The goal of the ITS Program is to use advanced technology to improve travel and roadway safety without expanding existing infrastructure. The ITS activities are generally done under seven broad categories: (1) Transportation management and traveller information; (2) travel demand management; (3) public transportation operations; (4) electronic payment; (5) commercial vehicle operations; (6) emergency management; and (7) advanced vehicle control and safety systems. Therefore, planning and research activities associated with the ITS Program are also exempt from sanctions under this criteria.

Project Development Activities

Development and completion of studies to meet requirements under NEPA are exempt from highway sanctions as long as consideration of projects that would be exempt under this policy memorandum, such as transit or other Transportation Demand Management (TDM) measures, are actively pursued as reasonable independent alternatives. Once all alternatives that could be considered exempt from highway sanctions under this policy memorandum are eliminated, project development activities for NEPA or other purposes are no longer exempt and can no longer be approved or funded under Title 23. For example, if prior to completion of NEPA documentation, all TDM measures are eliminated from consideration and the sole remaining question is the determination of an alignment for a highway capacity-expanding project (which may include TDM), subsequent project development activities are not exempt from highway sanctions.

The FHWA may not approve preliminary engineering for final design of a project, nor can approval be granted for a project's plans, specifications, and estimates after initiation of highway sanctions for projects that are not exempt under this policy memorandum. Neither right-of-way nor any necessary equipment may be purchased or leased with Federal funds for nonexempt projects while an area is under sanction. Federally-funded construction may not in any way begin on a project that does

not meet the exemption criteria described in this policy memorandum while an area is under sanction.

Highway sanctions apply to those projects whose funds have not yet been obligated by FHWA by the date the highway sanction applies. Those projects that have already received approval to proceed and had obligated funds before EPA imposes the prohibition may proceed even while the area is under sanction, if no other FHWA action is required to proceed. In the case of a phased project, only those phases that have been approved and had obligated funds prior to the date of sanction application may proceed. For example, if preliminary engineering for a project was approved and funds were obligated prior to application of sanctions but no approval was secured for later project phases (such as right-of-way acquisition, construction, etc.), preliminary engineering could proceed while the highway sanction applies, but no subsequent phases of the project could proceed with FHWA funds unless the total project meets the exemption criteria in this policy memorandum. These restrictions pertain only to project development activities that are to be approved or funded by FHWA under title 23. Activities funded under title 49, U.S.C., or through State or other funds, may proceed even after highway sanctions have been imposed unless: (1) Approval or action by FHWA under title 23 is required; and (2) they do not meet the exemption criteria of this policy memorandum.

Other Environmental Requirements

Exemption of a transportation project from the section 179(b)(1) highway sanctions does not waive any applicable requirements under NEPA (e.g., environmental documents), section 176(c) of the CAA (conformity requirement), or other Federal law.

Authority: 42 U.S.C. 7509(b); 23 U.S.C. 315; and 49 CFR 1.48.

Issued on: March 25, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–7821 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–22–M

Continuation of the Effectiveness of Interstate Commerce Commission Legal Documents

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of effectiveness of legal documents.

SUMMARY: This document gives notice of the continued effectiveness of all legal documents of the Interstate Commerce Commission (ICC) as provided for in section 204, Saving Provisions, of the ICC Termination Act of 1995. Specifically, section 204 provides that all rules and regulations of the ICC shall continue in effect past the sunset date of the ICC. Motor carriers are also notified that consolidations, mergers, and acquisitions of control of motor carriers of property are no longer subject to approval and authorization pursuant to 49 U.S.C. 11343.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Braverman, Motor Carrier Law Division, (202) 927–6316, or Ms. Grace E. Reidy, Motor Carrier Law Division, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995 (P.L. 104–88, 109 Stat. 803), effective January 1, 1996, eliminated unnecessary ICC regulatory functions and partly transferred residual functions to a newly established independent Surface Transportation Board (STB) within the DOT and partly to the Secretary of Transportation. Section 204 of the ICC Termination Act of 1995, the Saving Provisions, provides that all legal documents of the ICC that were issued or granted by an official authorized to effect such document shall continue in effect beyond the transfer of any function from the ICC to the STB or DOT.

The Saving Provisions provide, in part, that all rules of the ICC that were legally enacted by the proper official with requisite authority and which are not based upon a provision of law repealed and not substantially reenacted by the Act shall remain in effect after the ICC sunset. Moreover, such rules and regulations shall remain in effect until modified by the STB, the Secretary of Transportation or another authorized competent official. To ensure proper public notice of the continued effectiveness of such regulations, the current regulations issued by the previously existing ICC shall remain in effect until further action is taken to change the applicability and/or requirements of such regulations. Motor carriers are also notified that consolidations, mergers, and acquisitions of control of motor carriers of property are no longer subject to approval and authorization pursuant to 49 U.S.C. 11343. Section 11343 is a provision that was found in the repealed statute and was not revived or continued by the ICC Termination Act of 1995.

(23 U.S.C. 315; 49 CFR 1.48, Pub. L. 104–88, sec. 204.)

Issued on: March 25, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–7825 Filed 3–29–96; 8:45 am]

BILLING CODE 4910–22–P

Surface Transportation Board [1]

[STB Finance Docket No. 32866] [2]

Rail Link, Incorporated; Continuance in Control Exemption; Talleyrand Terminal Railroad Company, Inc.

Rail Link, Incorporated (Rail Link), has filed a verified notice under 49 CFR 1180.2(d)(2) to continue in control of the Talleyrand Terminal Railroad Company, Inc. (TTRC) upon TTRC becoming a Class III rail carrier. The transaction was to have been consummated on or after February 14, 1996.

TTRC, a noncarrier, has concurrently filed a notice of exemption in STB Finance Docket No. 32865, *Talleyrand Terminal Railroad Company, Inc.—Operation Exemption—Lines of Municipal Docks Railway,* in which TTRC seeks to operate approximately 10 miles of rail line owned by Municipal Docks Railway in Duval County, FL.

Rail Link also controls two nonconnecting Class III rail carriers: (1) The Commonwealth Railway, Incorporated and the Carolina Coastal Railway, Inc. (CCR).[3]

The transaction is exempt from the prior approval requirements of 49 U.S.C. 11323 because Rail Link states that: (1) The railroads will not connect with each other or with any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

[2] A notice in this proceeding was previously served by the Board and published in the Federal Register on March 8, 1996. A corrected notice is being issued because the earlier notice imposed labor protective conditions that the Board may no longer impose under the ICC Termination Act for transactions such as this one that are the subject of notices of exemption filed after the January 1, 1996 effective date of that Act.

[3] See *Rail Link Corporated—Continuance in Control Exemption—Commonwealth Railway Incorporated,* Finance Docket No. 31531 (ICC served Sept. 15, 1989).

with any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32866, must be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Robert A. Wimbish, Rea, Cross & Auchincloss, Suite 420, 1920 N Street, NW, Washington, DC 20036.

Decided: March 1, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–7867 Filed 3–29–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 12–51]

Affixing the Department of the Treasury Seal; Delegation of Authority

March 20, 1996.

1. Delegation. This Directive authorizes:

a. Heads of bureaus, the Inspector General, and their deputies to affix the Seal of the Department of the Treasury to authenticate originals and copies of books, records, papers, writings, and documents of the Department for all purposes, including the purposes authorized by 28 U.S.C. 1733(b);

b. The following officials in the Departmental Offices to affix the Seal of the Department of the Treasury:

(1) Deputy Assistant Secretary (Administration);

(2) Director, Printing and Graphics Division;

(3) Director, Administrative Operations Division; and

(4) Chief, Records Management and Resources Branch; and

c. The Deputy Assistant Secretary (Administration), heads of bureaus, and the Inspector General to procure and maintain custody of the dies for the Treasury seal.

2. Redelegation. Heads of bureaus, the Inspector General, and their deputies may redelegate in writing the authority in paragraph 1.a. to appropriate subordinate officials.

3. Cancellation. Treasury Directive 12–51, ''Affixing the Department of the Treasury Seal,'' dated June 30, 1992, is superseded.

4. Expiration Date. This Directive shall expire three years from the date of issuance unless cancelled or superseded by that date.

5. Office of Primary Interest. Administrative Operations Division, Office of the Deputy Assistant Secretary (Administration), Office of the Assistant Secretary for Management & CFO.

George Muñoz,

Assistant Secretary for Management & CFO.

[FR Doc. 96–7807 Filed 3–29–96; 8:45 am]

BILLING CODE 4810–25–P

Internal Revenue Service

[IA–62–91 and LR–129–86]

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(a)). Currently, the IRS is soliciting comments concerning existing final and temporary regulations, IA–62–91, and existing temporary regulations, LR–129–86, Capitalization and Inclusion in Inventory of Certain Costs. (Regulation § 1.263A).

DATES: Written comments should be received on or before May 31, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Capitalization and Inclusion in Inventory of Certain Costs.

OMB Number: 1545–0987.

Regulation Project Number: IA–62–91 Final and Temporary; LR–129–86 Temporary.

Abstract: The requirements are necessary to determine whether taxpayers comply with the cost allocation rules of section 263A and with the requirements for changing their methods of accounting. The information will be used to verify taxpayers' changes in methods of accounting.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Farms and business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: The estimated annual reporting and recordkeeping burden per respondent varies from 1 hour to 9 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated Total Annual Burden Hours: 100,000 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: March 27, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–7881 Filed 3–29–96; 8:45 am]

BILLING CODE 4830–01–U

[Form 8825]

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8825, Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

DATES: Written comments should be received on or before May 31, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

OMB Number: 1545–1186.

Form Number: Form 8825.

Abstract: Form 8825 is used to verify that partnerships and S corporations have correctly reported their income and expenses from rental real estate property. The form is filed with either Form 1065 or Form 1120S.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 705,000.

Estimated Time per Respondent: 8 hr., 31 min.

Estimated Total Annual Burden Hours: 6,006,600.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: March 22, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–7882 Filed 3–29–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Vietnam and Other War Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on the Readjustment of Vietnam and Other War Veterans will be held April 18 and 19, 1996. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for Vietnam and other war veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting on both days will be held at the American Legion, Washington Office, 1608 K Street, NW., Washington, DC. The meeting on both days will commence at 8:30 a.m. and adjourn at 4:30 p.m.

The agenda for April 18 will begin with a review of Committee special projects and reports. The first day's agenda will also cover a review of the Readjustment Counseling Service Vet Centers, a discussion of managed care principles in the context of the reorganization of Veterans Health Administration (VHA), and a review of VA information systems for reporting service connected post-traumatic stress disorder.

On April 19 the Committee will review the programs and activities of VA's Center for Minority Veterans and VHA's reorganization into the veterans integrated service network (VISN) structure. The second day's agenda will also consist of a planning meeting to formulate specific objectives for the remainder of the year.

Both day's meeting will be open to the public up to the meeting capacity of the room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Alfonso R. Batres, Ph.D., M.S.S.W., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202–565–7554).

Dated: Match 25, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–7809 Filed 3–29–96; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 63
Monday, April 1, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Issuance of Notices Relating to Debarment; Correction

Correction

In rule document 96–6667 beginning on page 11544 in the issue of Thursday, March 21, 1996, make the following correction:

§5.98 [Corrected]

On page 11545, in the first column, in §5.98, in the fifth line, ''§5.98'' should read ''§5.99''.

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 92

[Public Notice 2265]

Bureau of Consular Affairs; Notarial and Related Services

Correction

In rule document 95–24588 beginning on page 51719 in the issue of Tuesday, October 3, 1995, make the following correction:

§92.58 [Corrected]

On page 51723, in the first column, ''§92.59(s)'' should read ''§92.58(s)''.

BILLING CODE 1505–01–D

Federal Register

Monday
April 1, 1996

Part II

Department of Housing and Urban Development

24 CFR Part 100 et al.

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Regulatory Reinvention; Streamlining of HUD's Regulations Implementing the Fair Housing Act; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 100, 103, and 109

[Docket No. FR–4029–F–01]

RIN 2529–AA78

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Regulatory Reinvention; Streamlining of HUD's Regulations Implementing the Fair Housing Act

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations implementing the requirements of the Fair Housing Act. The Fair Housing Act makes it unlawful to discriminate in any aspect relating to the sale, rental, or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling. In an effort to comply with the President's regulatory reform initiatives, this rule streamlines these regulations by eliminating provisions which are obsolete or which do not require codification. This final rule will assist in HUD's continuing efforts to make its regulations clearer and to streamline the content of title 24 of the Code of Federal Regulations.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Susan Forward, Deputy Assistant Secretary for Enforcement and Investigations, Room 5106, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–4211. For hearing- and speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the ''800'' number, these numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. Background

A. The Fair Housing Act and the President's Regulatory Reinvention Initiative

The Fair Housing Act (title VIII of the Civil Rights Act, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3600–3619) (the Act) makes it unlawful to discriminate in any aspect relating to the sale, rental, or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, disability, familial status, or national origin.[1] HUD has implemented the requirements of the Fair Housing Act in 24 CFR parts 100, 103, 106, and 109.

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. As part of this review, HUD examined its regulations implementing the Act. HUD has determined that these regulations may be streamlined by eliminating unnecessary provisions.

Some provisions in HUD's regulations implementing the Act are now obsolete and may be removed. Further, some provisions are not regulatory requirements and, therefore, do not require codification. For example, several sections contain nonbinding guidance or explanations. While this information is very helpful to HUD's clients, HUD will more appropriately provide this information through handbook guidance or other materials, rather than maintain it in title 24. HUD believes these revisions will strengthen its enforcement of the Act by making the regulations clearer and more concise. The following section of the preamble details the streamlining amendments made by this final rule.

B. Streamlining Amendments

This final rule implements the amendments to the Act made by the Housing for Older Persons Act of 1995 (Pub. L. No. 104–76, 109 Stat. 787 (1995)) by revising HUD's provisions governing housing for persons ''55 or over.'' Specifically, 24 CFR §§ 100.304 and 100.315 have been merged, and the provisions of the amended § 100.304 track the statutory language. In addition, the provisions describing the ''significant facilities and services'' requirement for ''55 or over housing'' in §§ 100.305, 100.306, 100.307, 100.310, and 100.316, have been deleted to conform to the new requirements for ''55 or over housing'' established by the Housing for Older Persons Act.

The President's regulatory reform initiative calls for the simplification of regulatory requirements. Accordingly, this final rule streamlines paragraph (b) of § 103.30 to eliminate the detailed requirements for the form of fair housing complaints. As amended, this paragraph states only that the Assistant Secretary for Fair Housing and Equal Opportunity may require complaints to be made on prescribed forms.

Sections 103.105 and 103.110 have been revised to eliminate redundancies caused by HUD's consolidation, through a separate rulemaking, of the requirements for certification of State and local enforcement agencies and the Fair Housing Assistance Program (FHAP) regulations. Paragraph (a) of § 103.105 has been removed, as it duplicates a provision of the consolidated certification/FHAP rule. This final rule also amends paragraph (c) of § 103.110 to eliminate provisions that are repeated in the consolidated rule.

Section 103.225 has been clarified by eliminating the reference to ''the reasonable cause determination.'' The section is revised to make clear that an investigation will remain open until a determination has been made or a conciliation agreement has been executed and approved. Parts 106 (Fair Housing Administrative Meetings) and 109 (Advertising Guidelines) have been entirely eliminated, in accordance with the President's initiative on regulatory reinvention and reform, which requires the deletion of nonbinding guidance or explanations. While this information is very helpful to recipients, HUD will more appropriately provide this nonbinding guidance and information through handbook guidance or other materials rather than maintain it in the CFR.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if 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). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes obsolete regulatory provisions, guidelines and advisory materials and conforms regulatory provisions to current public law. It does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

[1] The Fair Housing Act uses the term ''handicap.'' However, HUD prefers the use of the term ''disability.'' Accordingly, this final rule makes the necessary substitution.

III. Other Matters

A. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

B. Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the Act. That finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays 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.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that 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. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or 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.

List of Subjects

24 CFR Part 100

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

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 109

Administrative practice and procedure, Advertising, Aged, Fair housing, Individuals with disabilities, Mortgages.

Accordingly, under the authority of 42 U.S.C. 3535(d), 24 CFR parts 100 and 103 are amended, and parts 106 and 109 are removed as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

1. The authority citation for part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

2. Section 100.304 is revised to read as follows:

§ 100.304 55 or over housing.

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit pursuant to this section.

(b) In order to qualify as housing for older persons under this section, at least 80 percent of the units in the housing facility must be occupied by at least one person 55 years of age or older, except that a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this section until 25 percent of the units in the facility are occupied.

(c) Housing satisfies the requirements of this section even though:

(1) On September 13, 1988, under 80 percent of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that are occupied after September 13, 1988, are occupied by at least one person 55 years of age or older.

(2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.

(3) There are units occupied by employees of the housing provider (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties directly related to the management or maintenance of the housing.

(4) There are insufficient units occupied by at least one person 55 years of age or older to meet the requirements of this section, but the housing provider at the time the exemption is asserted:

(i) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 or older; or

(ii) Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units which must be occupied by at least one person who is 55 or older.

§§ 100.305, 100.306, 100.307, 100.310, 100.315, and 100.316 [Removed]

3. Sections 100.305, 100.306, 100.307, 100.310, 100.315, and 100.316 are removed.

PART 103—FAIR HOUSING COMPLAINT PROCESSING

4. The authority citation for part 103 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

5. Section 103.30 is amended by revising paragraph (b) to read as follows:

§ 103.30 Form and content of complaint.

* * * * *

(b) The Assistant Secretary may require complaints to be made on prescribed forms.

* * * * *

§ 103.105 [Amended]

6. Section 103.105 is amended by removing paragraph (a) and removing the paragraph designation ''(b)'' from paragraph (b).

7. Section 103.110 is amended by revising paragraph (c) to read as follows:

§ 103.110 Reactivation of referred complaints.

* * * * *

(c) The substantially equivalent State or local agency has failed to commence proceedings with respect to the complaint within 30 days of the date that it received the notification and referral of the complaint; or the agency commenced proceedings within this 30-day period, but the Assistant Secretary determines that the agency has failed to carry the proceedings forward with reasonable promptness.

8. Section 103.225 is revised to read as follows:

§ 103.225 Completion of investigation.

The investigation will remain open until a determination is made under § 103.400, or a conciliation agreement is executed and approved under § 103.310. Unless it is impracticable to do so, the Assistant Secretary will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint (or where the Assistant Secretary reactivates the complaint, within 100 days after service of the notice of reactivation under § 103.115). If the Assistant Secretary is unable to complete the investigation within the 100-day period, HUD will notify the aggrieved person and the respondent, by mail, of the reasons for the delay.

PART 109—[REMOVED]

9. Part 109 is removed.

Dated: February 22, 1996.

Elizabeth K. Julian,

Acting Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 96–7786 Filed 3–29–96; 8:45 am]

BILLING CODE 4210–28–P

Federal Register

Monday
April 1, 1996

Part III

Federal Reserve System

12 CFR Part 219

Department of the Treasury

31 CFR Part 103

Amendments to the Bank Secrecy Act Regulations; Recordkeeping Requirements for Certain Financial Records; Final Rules

FEDERAL RESERVE SYSTEM

[Docket No. R–0807]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA16

Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers and Transmittals of Funds by Banks and other Financial Institutions

AGENCY: Board of Governors of the Federal Reserve System; Department of the Treasury.

ACTION: Joint final rule; delay of effective date.

SUMMARY: On January 3, 1995, the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board) jointly published a final rule that requires enhanced recordkeeping related to certain funds transfers and transmittals of funds by financial institutions, effective January 1, 1996. (60 FR 220). On August 24, 1995, the Treasury and the Board delayed the effective date of the joint final rule until April 1, 1996, because of the uncertainty by financial institutions as to their responsibilities under the joint final rule with respect to international transfers pending final action on proposed amendments to the rule (60 FR 44144). To ensure that there is an adequate implementation period following final action on the proposed amendments, which are published elsewhere in today's Federal Register, the Treasury and the Board have delayed the effective date of the joint final rule until May 28, 1996.

EFFECTIVE DATE: Effective April 1, 1996, the effective date of the joint final rule amending 31 CFR part 103 published on January 3, 1995, at 60 FR 220, is further delayed until May 28, 1996.

FOR FURTHER INFORMATION CONTACT:

Treasury: Roger Weiner, Assistant Director, 202/622–0400; Stephen R. Kroll, Legal Counsel, 703/905–3534, FinCEN.

Board: Louise L. Roseman, Associate Director, 202/452–2789; Jeff Stehm, Manager, Fedwire Section, 202/452–2217; Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel, 202/452–3625; or Elaine Boutilier, Senior Counsel 202/452–2418, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, 202/452–3544.

The effective date of the joint final rule amending 31 CFR part 103 published by the Board and Treasury at 60 FR 220 on January 3, 1995, and delayed from January 1, 1996, to April 1, 1996 (60 FR 44144, August 24, 1995), is further delayed until May 28, 1996.

In concurrence:

By order of the Board of Governors of the Federal Reserve System, March 26, 1996.

William W. Wiles,

Secretary to the Board.

By the Department of the Treasury, March 26, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 96–7683 Filed 3–29–96; 8:45 a.m.]

BILLING CODE Board: 6210–01–P (50%)
Treasury: 4820–03 (50%)

FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R–0807]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 3, 1995, the Board of Governors of the Federal Reserve System (Board) published a final rule that established Subparts A and B of Regulation S (60 FR 231). Subpart B cross-references the substantive provisions of a joint rule adopted by the Board and the Department of the Treasury on the same day. The joint rule requires enhanced recordkeeping related to certain funds transfers and transmittals of funds by financial institutions. The Board and the Department of the Treasury have delayed the effective date of the joint final rule until May 28, 1996, to provide financial institutions sufficient time to prepare to comply with the rule pending final action on the proposed amendments, which are published elsewhere in today's issue of the Federal Register. Because Subpart B of Regulation S relies on the joint final rule for its substantive provisions, its effective date is also delayed until May 28, 1996.

EFFECTIVE DATES: Effective April 1, 1996, the effective date for 12 CFR part 219, Subpart B, which was added at 60 FR 231 published on January 3, 1995, is further delayed until May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Associate Director, 202/452–2789; Jeff Stehm, Manager, 202/452–2217; Darrell Mak, Financial Services Analyst, 202/452–3223, Fedwire Section, Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel, 202/452–3625; or Elaine Boutilier, Senior Counsel 202/452–2418, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, 202/452–3544.

The effective date of 12 CFR part 219, Subpart B, added by the Board at 60 FR 231 on January 3, 1995, and delayed from January 1, 1996, to April 1, 1996 (60 FR 44144, August 24, 1995), is further delayed until May 28, 1996.

By order of the Board of Governors of the Federal Reserve System, March 26, 1996.

William W. Wiles,

Secretary to the Board.

[FR Doc. 96–7684 Filed 3–29–96; 8:45 a.m.]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA17

Amendment to the Bank Secrecy Act Regulations Relating to Orders for Transmittals of Funds by Financial Institutions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 3, 1995 (60 FR 234), the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board) jointly adopted a final rule (the joint rule) requiring financial institutions to collect and retain certain information pertaining to transmittals of funds, and Treasury adopted a final rule (the travel rule) requiring financial institutions to include in transmittal orders certain information collected under the joint rule. On August 24, 1995 (60 FR 44144), Treasury delayed the effective date of the travel rule until April 1, 1996. In response to industry concerns about the application of the

joint rule and the travel rule to transmittals of funds involving foreign financial institutions, Treasury and the Board have amended the joint rule to conform certain of the definitions of the parties to transmittals of funds to definitions found in Article 4A of the Uniform Commercial Code. Treasury has also amended the travel rule: To clarify that the exceptions applicable for the joint rule are also applicable for the travel rule; and to accommodate a compliance concern raised by the banking industry after the close of the comment period. To ensure that there is an adequate implementation period following final action on the proposed amendments, which are published elsewhere in today's Federal Register, the Treasury has delayed the effective date of the final travel rule until May 28, 1996.

EFFECTIVE DATE: Effective April 1, 1996, the effective date of the final rule published on January 3, 1995, at 60 FR 234, is further delayed until May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Charles D. Klingman, Office of Financial Institutions Policy, at (703) 905–3920, or Joseph M. Myers, Office of Legal Counsel, (703) 905–3590.

Therefore, the effective date of the final rule issued by Treasury and published at 60 FR 234, January 3, 1995, delayed from January 1, 1996 to April 1, 1996 (60 FR 44144, August 24, 1995), is further dalayed until May 28, 1996.

Dated: March 26, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 96–7680 Filed 3–29–96; 8:45 am]

BILLING CODE 4820–03–P

FEDERAL RESERVE SYSTEM

[Docket No. R–0888]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA16

Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers and Transmittals of Funds by Banks and Other Financial Institutions

AGENCY: Department of the Treasury; Board of Governors of the Federal Reserve System.

ACTION: Joint final rule.

SUMMARY: The Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board) jointly have adopted amendments to their final rule that requires enhanced recordkeeping related to certain funds transfers and transmittals of funds by financial institutions (the joint rule). These amendments revise the joint rule's definitions and make technical conforming changes to the substantive provisions of the joint rule to conform the definitions of the parties to an international transfer to their meanings under Article 4A of the Uniform Commercial Code (UCC 4A). The revised definitions will also affect the provisions of a Treasury companion rule, adopted in January 1995, known as the travel rule, which requires financial institutions to include in transmittal orders certain information that must be maintained under the joint rule. Treasury is also publishing amendments to its travel rule. See companion final rule amending the travel rule published elsewhere in today's issue of the Federal Register. The amendments are intended to reduce confusion of banks and nonbank financial institutions as to the applicability of the joint rule and the travel rule and to reduce the cost of complying with the rules' requirements. The Treasury and the Board believe that the amendments will not have a material adverse effect on the rules' usefulness in law enforcement investigations and proceedings. The amendments should not affect a bank's responsibilities under the rules with respect to domestic funds transfers. Furthermore, to ensure that there is an adequate implementation period following final action on the proposed amendments, the Treasury and the Board have delayed the effective date of the joint final rule until May 28, 1996. See the final rule; delay of effective date published elsewhere in today's issue of the Federal Register.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT:

Treasury: Roger Weiner, Assistant Director, 202/622–0400; Stephen R. Kroll, Legal Counsel, 703/905–3534, FinCEN.

Board: Louise L. Roseman, Associate Director, 202/452–2789; Darrell Mak, Financial Services Analyst, 202/452–3223; Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel, 202/452–3625; or Elaine Boutilier, Senior Counsel 202/452–2418, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson, 202/452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The statute generally referred to as the Bank Secrecy Act (BSA) (Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5330) authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN. The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102–550), which authorizes the Treasury and the Board to prescribe regulations to require maintenance of records regarding domestic and international funds transfers. The Treasury and the Board are required to promulgate jointly, after consultation with state banking supervisors, recordkeeping requirements for international funds transfers by depository institutions and nonbank financial institutions. The Treasury and the Board are required to consider the usefulness of recordkeeping rules for international funds transfers in criminal, tax, or regulatory investigations or proceedings and the effect of such rules on the cost and efficiency of the payments system. The Treasury and the Board are authorized to promulgate regulations for domestic funds transfers by depository institutions. The Treasury, but not the Board, is authorized to promulgate recordkeeping and reporting requirements for domestic funds transfers by nonbank financial institutions.

In January 1995, the Treasury and the Board jointly published enhanced recordkeeping requirements related to certain funds transfers and transmittals of funds by banks and other financial institutions, in accordance with the BSA (60 FR 220, January 3, 1995). At the same time, the Treasury adopted a companion rule, known as the travel rule, which requires financial institutions to include in transmittal orders certain information that must be retained under the joint rule (60 FR 234, January 3, 1995). The joint rule sets forth definitions of terms used in both rules.

Subsequent to adoption of the joint rule, several large banks as well as bank counsel advised the Treasury and the

Board that compliance with the joint rule and the travel rule would be complicated if the parties to an international funds transfer were defined differently in the joint rule than they are in the Uniform Commercial Code Article 4A (UCC 4A). Under the joint rule adopted in January, the first U.S. bank office that handles an incoming international funds transfer was defined as the originator's bank.[1] Under UCC 4A and the Board's Regulation J governing Fedwire transfers (12 CFR Part 210, subpart B), which incorporates UCC 4A, if the U.S. bank receives a payment order from a foreign bank and executes a corresponding payment order to a subsequent receiving bank, the first U.S. bank would be deemed an intermediary bank rather than the originator's bank. Large banks that regularly process international funds transfers believe that substantial confusion would result from defining the parties to an international funds transfer for the purposes of the BSA rules differently from the manner in which they are defined under UCC 4A. In addition, several banks indicated that they believe the difference between the BSA and the UCC 4A definitions may cause certain problems in the application of the joint rule and the travel rule to international funds transfers.

In August 1995, the Treasury and the Board proposed amendments to the joint rule to address industry concerns regarding the confusion created by defining the parties to an international funds transfer in a manner that is not consistent with the roles of the parties as defined by UCC 4A (60 FR 44146, August 24, 1995). In their notice of the proposed amendments, the Treasury and the Board included a detailed illustration of the operational issues raised by industry representatives.

Under the proposed amendments, the definition of the first U.S. bank office that handles an incoming international funds transfer would be changed from an originator's bank to an intermediary bank. Corresponding changes were proposed to address the same issues with respect to nonbank financial institutions that conduct international transmittals of funds. In addition, the Treasury and the Board proposed amending section 103.33(e)(6) by deleting the word ''domestic'' prior to the word ''bank'' and prior to the words ''broker or dealer in securities.'' These changes have no material effect on the scope of the exclusions set forth in this section as the word ''bank'' is defined to be limited to offices located within the United States and the term ''broker or dealer in securities'' is limited to brokers registered with the Securities and Exchange Commission.

Also in August 1995, Treasury and the Board deferred the effective date of the joint rule until April 1, 1996 from January 1, 1996, to provide financial institutions sufficient time to prepare to comply with their responsibilities under the joint final rule with respect to international transfers pending final action on the proposed amendments to the joint rule (60 FR 44144, August 24, 1995). To ensure that there is an adequate implementation period following final action on the proposed amendments, the Treasury and the Board have delayed further the effective date of the joint final rule until May 28, 1996. See the final rule; delay of effective date published elsewhere in today's issue of the Federal Register.

II. Summary of Public Comments

The Treasury and the Board received eleven comments on the proposed amendments. The following table identifies the number of commenters by type of organization:

Commercial Banks	4
Federal Reserve Banks	3
Savings Institutions	1
Trade Association	1
Credit Union Association	1
Clearing House Association	*1*
Total Public Comments	11

Ten comment letters supported the proposed amendments to the joint rule. Commenters agreed that amending the definitions of the parties to an international transfer in the joint rule will reduce confusion with respect to the interpretation of the rules and will facilitate compliance with the rules' requirements.

One commenter requested that the Treasury and the Board define how intermediary banks might be expected to retrieve records. All banks are subject to the general retrievability requirements under section 103.38(d). Under this standard, the expected timeliness of retrievability will vary by request. Generally, records should be accessible within a reasonable period of time, considering the quantity of records requested, the nature and age of the record, the amount and type of information provided by the law enforcement agency making the request, as well as the particular bank's volume and capacity to retrieve the records. Intermediary banks are obligated to comply with any properly executed subpoena or search warrant. No changes have been made to the final rule with respect to the retrievability requirements.

Another commenter requested that the Treasury and the Board clarify the applicability of the joint rule in cases in which an originator's bank accomplishes a transfer by issuing a check payable to another bank. The Treasury and the Board plan to address this and other issues in a commentary that will be published to address various aspects of the joint rule.

One bank commented that the applicability of the BSA regulations to small banks would not serve a high degree of usefulness in criminal, tax or regulatory investigations or proceedings. The Treasury and the Board believe that exempting small institutions would facilitate money laundering through those institutions.

III. Conclusion

Based on the responses received by the commenters, the Treasury and the Board have adopted the amendments to the joint rule as proposed. The Treasury and the Board do not believe that these amendments will increase the cost of compliance with the rules' requirements for those banks and nonbank financial institutions that have prepared to comply with the rules under the assumption that the first U.S. banking office in an international transfer is subject to the originator's bank responsibilities. Further, the Treasury and the Board do not believe that identifying the banks in an international transfer in the same manner as they are defined in UCC 4A will reduce the usefulness of the information to law enforcement, *provided* that intermediary banks comply with the requirements of 103.38(d). As part of the 36-month review of the effectiveness of the joint rule and the travel rule, Treasury will monitor the experience of law enforcement in obtaining from intermediary banks information retained pursuant to the joint rule.

IV. Paperwork Reduction Act

The collection of information required by the joint final rule, which is being amended in this notice, was submitted by the Treasury to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under

[1] The originator's bank was defined as ''the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or the originator if the originator is a bank.'' (103.11(w)) A receiving bank was defined as ''the bank to which the sender's instruction is addressed.'' (103.11(aa)) As the definition of bank was limited to an ''agent, agency, branch or office within the United States'' (103.11(c)), a receiving bank must be a U.S. banking office, and therefore the originator's bank was the first U.S. banking office to handle the transfer.

control number 1505–0063. (60 FR 227, January 3, 1995) The collection is authorized, as before, by 12 U.S.C. 1829b and 1959 and 31 U.S.C. 5311–5330.

The changes to the joint final rule in this document will eliminate information collection requirements that were required by the joint final rule. Therefore, no additional Paperwork Reduction Act submissions are required.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Treasury and the Board hereby certify that these amendments to the joint final rule will not have a significant economic impact on a substantial number of small entities. The amendments eliminate uncertainty as to the application of the joint final rule and reduce the cost of complying with the joint rule's requirements. Further, the amendments affect international funds transfers and transmittals of funds, which are handled almost exclusively by large institutions. Accordingly, a regulatory flexibility analysis is not required.

VI. Executive Order 12866

The Treasury finds that these amendments to the joint rule are not ''significant'' for purposes of Executive Order 12866. The modifications should reduce the cost of compliance with the joint rule and the travel rule. The Treasury believes that these rule changes will not affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These revisions create no inconsistencies with, nor do they interfere with actions taken or planned by other agencies. Finally, these revisions raise no novel legal or policy issues. A cost and benefit analysis therefore is not required.

VII. Unfunded Mandates Reform Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), signed into law on March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The Treasury has determined that it is not required to prepare a written budgetary impact statement for the amendments, and has concluded that the amendments are the most cost-effective and least burdensome means of achieving the stated objectives of the rule.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities.

Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11 is amended by revising paragraphs (e), (w), (y) introductory text, (aa), (bb), (dd), (kk) introductory text, (ll), and (mm) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(e) *Beneficiary's bank.* The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

* * * * *

(w) *Originator's bank.* The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.

* * * * *

(y) *Payment order.* An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

* * * * *

(aa) *Receiving bank.* The bank or foreign bank to which the sender's instruction is addressed.

(bb) *Receiving financial institution.* The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

* * * * *

(dd) *Recipient's financial institution.* The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

* * * * *

(kk) *Transmittal order.* The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

* * * * *

(ll) *Transmittor.* The sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor's financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(mm) *Transmittor's financial institution.* The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution or foreign financial agency, or the transmittor if the transmittor is a financial institution or foreign financial agency. The term transmittor's financial institution includes an originator's bank, except where the originator is a transmittor's financial institution other than a bank or foreign bank.

* * * * *

3. In § 103.33, paragraphs (e) introductory text, (e)(1)(i) introductory text, (e)(1)(ii), (e)(1)(iii), (e)(6)(i)(A) through (e)(6)(i)(G), (e)(6)(ii), (f) introductory text, (f)(1)(i) introductory text, (f)(1)(ii), (f)(1)(iii), (f)(6)(i)(A) through (f)(6)(i)(G) and (f)(6)(ii) are revised to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(e) *Banks.* Each agent, agency, branch, or office located within the United States of a bank is subject to the requirements of this paragraph (e) with respect to a funds transfer in the amount of $3,000 or more:

(1) *Recordkeeping requirements.* (i) For each payment order that it accepts as an originator's bank, a bank shall obtain and retain either the original or

a microfilm, other copy, or electronic record of the following information relating to the payment order:

* * * * *

(ii) For each payment order that it accepts as an intermediary bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

(iii) For each payment order that it accepts as a beneficiary's bank, a bank shall retain either the original or a microfilm, other copy, or electronic record of the payment order.

* * * * *

(6) *Exceptions.* * * *

(i) * * *

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) The United States;

(F) A state or local government; or

(G) A federal, state or local government agency or instrumentality; and

(ii) Funds transfers where both the originator and the beneficiary are the same person and the originator's bank and the beneficiary's bank are the same bank.

(f) *Nonbank financial institutions.* Each agent, agency, branch, or office located within the United States of a financial institution other than a bank is subject to the requirements of this paragraph (f) with respect to a transmittal of funds in the amount of $3,000 or more:

(1) *Recordkeeping requirements.* (i) For each transmittal order that it accepts as a transmittor's financial institution, a financial institution shall obtain and retain either the original or a microfilm, other copy, or electronic record of the following information relating to the transmittal order:

* * * * *

(ii) For each transmittal order that it accepts as an intermediary financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

(iii) for each transmittal order that it accepts as a recipient's financial institution, a financial institution shall retain either the original or a microfilm, other copy, or electronic record of the transmittal order.

* * * * *

(6) *Exceptions.* * * *

(i) * * *

(A) A bank;

(B) A wholly-owned domestic subsidiary of a bank chartered in the United States;

(C) A broker or dealer in securities;

(D) A wholly-owned domestic subsidiary of a broker or dealer in securities;

(E) The United States;

(F) A state or local government; or

(G) A federal, state or local government agency or instrumentality; and

(ii) Transmittals of funds where both the transmittor and the recipient are the same person and the transmittor's financial institution and the recipient's financial institution are the same broker or dealer in securities.

In concurrence:

By order of the Board of Governors of the Federal Reserve System, March 26, 1996.

William W. Wiles,

Secretary to the Board.

By the Department of the Treasury, March 26, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 96–7685 Filed 3–29–96; 8:45 am]

BILLING CODES Board: 6210–01–P (50%) Treasury: 4820–03 (50%)

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA17

Amendment to the Bank Secrecy Act Regulations Relating to Orders for Transmittals of Funds by Financial Institutions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Final rule.

SUMMARY: On January 3, 1995, the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (the Board) jointly adopted a final rule (the joint rule) requiring financial institutions to collect and retain certain information pertaining to transmittals of funds, and Treasury adopted a final rule (the travel rule) requiring financial institutions to include in transmittal orders certain information collected under the joint rule. In response to industry concerns about the application of the joint rule and the travel rule to transmittals of funds involving foreign financial institutions, Treasury and the Board have amended the joint rule to conform certain of the definitions of the parties to transmittals of funds to definitions found in Article 4A of the Uniform Commercial Code (see document published elsewhere in today's Federal Register). This final rule amends the travel rule to reflect the amended definitions in the joint rule, and amends the travel rule to clarify that the exceptions applicable for the joint rule are also applicable for the travel rule.

There is one further change to the travel rule that was not a part of the original proposed rule, new paragraph (g)(3). This change responds to a significant compliance issue that the banking industry did not identify until after the comment period: until all banks convert to the expanded Fedwire format, there will not always be enough space to include in a transmittal order all of the information required by the rule.

Finally, because solving these problems has taken longer than anticipated, this final travel rule, like the final joint rule, will be effective not on April 1, 1996, as originally planned, but on May 28, 1996.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Charles D. Klingman, Office of Financial Institutions Policy, at (703) 905–3920, or Joseph M. Myers, Office of Legal Counsel, (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background

The statute generally referred to as the Bank Secrecy Act (BSA) (Title I and Title II of Pub. L. 91–508, codified at 12 U.S.C. 1829b and 1951–1959, and 31 U.S.C. 5311–5330), authorizes the Secretary of the Treasury (the Secretary) to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, and to implement anti-money laundering programs and compliance procedures. The Secretary's authority to administer the BSA has been delegated to the Director of the Financial Crimes Enforcement Network (FinCEN). Section 1515 of the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Title XV of Pub. L. 102–550 (Annunzio-Wylie)), codified at 12 U.S.C. 1829b(b), amended the BSA (1) to require the Secretary and the Board jointly to promulgate recordkeeping requirements for international funds transfers by depository institutions and nonbank financial institutions; and (2) to authorize the Secretary and the Board jointly to promulgate regulations for domestic funds transfers by depository institutions. Section 1517(a) of

Annunzio-Wylie, codified at 31 U.S.C. 5318 (g) and (h), authorizes the Secretary to require financial institutions to carry out anti-money laundering programs.

In January 1995, Treasury and the Board jointly adopted a rule (the joint rule) that imposed recordkeeping requirements for transmittals of funds by banks and other financial institutions (60 FR 220, January 3, 1995). Treasury also adopted a rule (the travel rule) requiring financial institutions (including banks) to include in transmittal orders certain information collected under the joint rule (60 FR 234, January 3, 1995). The joint rule defined the terms used in both rules. These rules were to become effective on January 1, 1996.

Following publication of the joint rule and the travel rule, it became apparent that there was confusion within the banking industry about the application of the rules to transmittals of funds involving foreign financial institutions. Several banks and bank counsel advised Treasury and the Board that compliance with the rules was complicated by the fact that certain of the joint rule definitions of parties to funds transfers differed from the definitions of those terms in Article 4A of the Uniform Commercial Code (UCC 4A). Because a financial institution's obligations under the joint and travel rules depend upon its role in a particular transmittal of funds, the differences between the Bank Secrecy Act regulations definitions and UCC 4A definitions had material operational consequences.

The most significant effect of the difference in the definitions was the treatment of a U.S. financial institution that receives a transmittal order from a foreign financial institution. Under the definitions in the original joint rule, the foreign financial institution sending the transmittal order would be the transmittor and the U.S. financial institution would be the transmittor's financial institution. The U.S. financial institution would be subject to the travel rule requirements imposed on a transmittor's financial institution, and compliance might require significant changes in standard business practices.

II. Proposed Amendments

In response to industry concerns, Treasury and the Board proposed amendments to the joint rule to conform the definitions of banks that are parties to funds transfers to the definitions found in UCC 4A and to change the definitions of the terms applicable to financial institutions so that their meanings are parallel to the definitions in UCC 4A (60 FR 44146, August 24, 1995). At the same time, Treasury proposed amendments to the travel rule to reflect the proposed amendments to the definitions (60 FR 44151, August 24, 1995). The changes to the travel rule were necessary in order to clarify that although a foreign financial institution may be considered a transmittor's financial institution, only financial institutions located within the U.S. are subject to the requirements of the travel rule.

The proposed amendments also proposed to add to the travel rule new paragraph 103.33(g)(3), in order to clarify that transactions excepted under the joint rule pursuant to paragraphs 103.33(e)(6) and 103.33(f)(6) are also excepted from the travel rule. Those sections provide that a transmittal of funds is not subject to the requirements of the joint rule if the parties to the transmittal are both banks or brokers and dealers in securities, or their subsidiaries, or government entities, *or* if the transmittor and recipient are the same person and the transmittal involves a single bank or broker/dealer.

III. Comments

Treasury received three comments on the proposed changes to the travel rule. The commenters were in favor of the proposed amendments, and agreed that the amendments would reduce confusion and uncertainty about the application of the rules, and that the rules would be less burdensome if the proposed amendments were adopted. One commenter specifically agreed that the inclusion of the exceptions in the travel rule was a positive change. Based on the comments received, Treasury is adopting the amendments as proposed, except that the proposed new paragraph 103.33(g)(3) will appear at 103.33(g)(4).

IV. New Section 103.33(g)(3)

As noted above, there is one further change to the travel rule that was not a part of the proposed rule, new paragraph (g)(3). This change responds to a significant compliance issue that the banking industry did not identify until after the comment period: until all banks convert to the expanded Fedwire format, there will not always be enough space to include in a transmittal order all of the information required by paragraphs (g)(1) (i), (ii), and (vii) and (g)(2) (i), (ii), and (vii).[1] Banking industry representatives have assured FinCEN that the expanded Fedwire format, scheduled to be adopted industry-wide by January 1, 1998, will allow all information required by paragraph (g) to be sent and received. If the travel rule were finalized as proposed, banks that are in the process of adopting the expanded Fedwire format would have to expend considerable resources to create an interim system to accommodate all of the information required by paragraph 103.33(g) until January 1, 1998. Accordingly, new paragraph (g)(3) provides that, until it has converted to the new Fedwire format, a financial institution will be deemed to be in compliance with paragraph (g), even if some information required to be included on a transmittal order is not so included, *provided that,* when either requested by a corresponding financial institution to assist in retrieval of information in connection with Bank Secrecy Act compliance efforts or in response to a law enforcement request, or when presented itself with a judicial order, subpoena or administrative summons requesting any information required by paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), or (g)(2)(vii), the financial institution retrieves such information within a reasonable time.

Treasury notes that new paragraph (g)(3)(i)(A) still requires inclusion in the transmittal order, to the extent such items are received with the prior transmittal order, of certain recipient information as required by paragraphs (g)(1)(vi) and (g)(2)(vi). These paragraphs themselves, however, are not fully effective with respect to transmittals of funds effected through the Fedwire funds transfer system until such time as the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format. Treasury anticipates that funds transfers effected through the Fedwire system will be covered equally by both the current exception provision for paragraphs (g)(1)(vi) and (g)(2)(vi) as well as the new safe harbor provision of paragraph (g)(3). Thus, as an operational matter in pre-conversion Fedwire transfers, paragraph (g)(3) will require that the transmittal order include only one of the items otherwise required by paragraphs (g)(1)(vi) and (g)(2)(vi), if received with the transmittal order.

V. Effect on Law Enforcement; Ongoing Review

Treasury believes that today's changes in the joint rule and in this final rule will reduce the burden of compliance,

[1] In addition, some software application programs allow large, institutional customers to generate and transmit payment orders directly through a bank's electronic funds transfer system. Some of these software application programs follow the format of the Fedwire system. Thus, banks may have difficulty complying with section 103.33(g) with respect to payment orders transmitted directly by their customers.

while maintaining the usefulness for law enforcement of the information passed on in transmittal orders pursuant to the travel rule. While the requirement placed on an intermediary financial institution is limited to information that it receives, generally the information passed on should be of greater use to law enforcement because the information obtained will pertain to the true transmittor and recipient in the transaction. Furthermore, the financial institutions that must be identified will more likely be ones with which the transmittor and recipient have account relationships.

As stated in the joint and travel rules when they were adopted in January 1995, Treasury will monitor the effectiveness of the rules to assess their usefulness to law enforcement and their effect on the cost and efficiency of the payments system. Within 36 months of May 28, 1996, Treasury will review the effectiveness of the travel rule and will consider making any appropriate modifications.

VI. Executive Order 12866

Treasury finds that this final rule is not a significant rule for purposes of Executive Order 12866. The final rule is not anticipated to have an annual effect on the economy of $100 million or more. It will not affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. It creates no inconsistencies with, nor does it interfere with actions taken or planned by other agencies. Finally, it raises no novel legal or policy issues. A cost and benefit analysis is therefore not required.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, Treasury hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will eliminate uncertainty as to the application of the joint rule and the travel rule and will reduce the cost of complying with the rules' requirements. Accordingly, a regulatory flexibility analysis is not required.

VIII. Paperwork Reduction Act

The collection of information required by the rule that is amended by this final rule was submitted by the Treasury to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h) and 3507(d)) under control number 1505–0063 (see 60 FR 237, January 3, 1995). The collection is authorized, as before, by 12 U.S.C. 1829b and 1959 and 31 U.S.C. 5311–5330.

This final rule will eliminate information collection requirements that were previously required. Therefore no additional Paperwork Reduction Act submissions are required.

IX. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, signed into law on March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Treasury has determined that it is not required to prepare a written budgetary impact statement for this final rule, and has concluded that this final rule is the most cost-effective and least burdensome means of achieving Treasury's objectives.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. In § 103.33, paragraphs (g) introductory text and (g)(1) introductory text are revised and paragraphs (g)(3) and (g)(4) are added to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(g) Any transmittor's financial institution or intermediary financial institution located within the United States shall include in any transmittal order for a transmittal of funds in the amount of $3,000 or more, information as required in this paragraph (g):

(1) A transmittor's financial institution shall include in a transmittal order, at the time it is sent to a receiving financial institution, the following information:

* * * * *

(3) Safe harbor for transmittals of funds prior to conversion to the expanded Fedwire message format. The following provisions apply to transmittals of funds effected through the Federal Reserve's Fedwire funds transfer system by a financial institution before the bank that sends the order to the Federal Reserve Bank completes its conversion to the expanded Fedwire message format.

(i) *Transmittor's financial institution.* A transmittor's financial institution will be deemed to be in compliance with the provisions of paragraph (g)(1) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(1)(iii) through (v), and the information specified in paragraph (g)(1)(vi) of this section to the extent that such information has been received by the financial institution, and

(B) Provides the information specified in paragraphs (g)(1)(i), (ii) and (vii) of this section to a financial institution that acted as an intermediary financial institution or recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or financial regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(ii) *Intermediary financial institution.* An intermediary financial institution will be deemed to be in compliance with the provisions of paragraph (g)(2) of this section if it:

(A) Includes in the transmittal order, at the time it is sent to the receiving financial institution, the information specified in paragraphs (g)(2)(iii) through (g)(2)(vi) of this section, to the extent that such information has been received by the intermediary financial institution; and

(B) Provides the information specified in paragraphs (g)(2)(i), (ii) and (vii) of this section, to the extent that such information has been received by the intermediary financial institution, to a financial institution that acted as an intermediary financial institution or

recipient's financial institution in connection with the transmittal order, within a reasonable time after any such financial institution makes a request therefor in connection with the requesting financial institution's receipt of a lawful request for such information from a federal, state, or local law enforcement or regulatory agency, or in connection with the requesting financial institution's own Bank Secrecy Act compliance program.

(iii) *Obligation of requesting financial institution.* Any information requested under paragraph (g)(3)(i)(B) or (g)(3)(ii)(B) of this section shall be treated by the requesting institution, once received, as if it had been included in the transmittal order to which such information relates.

(4) Exceptions. The requirements of this paragraph (g) shall not apply to transmittals of funds that are listed in paragraph (e)(6) or (f)(6) of this section.

* * * * *

Dated: March 26, 1996.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 96–7682 Filed 3–29–96; 8:45 am]

BILLING CODE 4820–03–P

Federal Register

Monday
April 1, 1996

Part IV

Department of Education

Fund for the Improvement of Education Program; Notice

DEPARTMENT OF EDUCATION

Fund for the Improvement of Education Program

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces final priorities to fund projects that develop, evaluate and field-test State assessments aligned with challenging State content standards. The Secretary may use these priorities in fiscal year (FY) 1996 and subsequent years. The Secretary intends to provide Federal financial assistance to assist States in the development of assessments that can be used to improve classroom instruction, motivate all students to improve educational performance, and provide examples for students, teachers and parents of the learning outcomes that can be expected for all students.

EFFECTIVE DATE: These priorities take effect May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. David Sweet, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 508H, Washington, D.C. 20208–5573. Telephone: (202) 219–2079. Internet: (David—Sweet@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement of Education (FIE) supports nationally significant projects to improve the quality of education, assist all students to meet challenging State content and student performance standards and contribute to the achievement of the National Education Goals. The FIE program is authorized under Part A of Title X of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (20 U.S.C. 8001).

The Secretary is expressly authorized to use FIE program funds to support systemic education reform at the State and local levels through activities such as the development and evaluation of model strategies for assessment of student learning. The Secretary believes that the alignment of State content standards and State assessments is an important part of systemic educational reform. Exemplifying the forms and levels of educational performance that students in a State should be able to achieve is a critical step in the process of ensuring that students are reaching the State's challenging content standards. While many States are developing new content standards for the core academic subjects, some States are using assessments that are not aligned to their new content standards. The Secretary believes that helping to defray the cost of developing assessments aligned with challenging State content standards will advance State reform efforts.

State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, and other public and private agencies, organizations, and institutions are eligible to receive funds under these priorities. However, the Secretary believes that SEAs and LEAs have the resources, knowledge, and authority necessary to lead systemic reform efforts. Therefore, SEAs and LEAs must participate as lead agents in the development of State assessments to ensure that the assessment systems are aligned with State content standards and the content of the curriculum. If reform is to be systemic, State agencies that are working on content and curriculum must either direct the development of assessments themselves or provide direction to LEAs to do so.

It is imperative that State assessments take into account the needs of all students. Therefore, funds awarded under the proposed priority may be used to develop, modify, field-test and evaluate assessments that take into account the needs of students with disabilities or students who have limited English proficiency.

Awards under these proposed priorities may be jointly funded under three statutory authorities:

(1) The Fund for the Improvement of Education (20 U.S.C. 8001);

(2) Section 618(c) of the Individuals with Disabilities Education Act (IDEA) regarding Evaluation and Program Information (20 U.S.C. 1418(c));

(3) Bilingual Education Research, Evaluation, and Dissemination Program, authorized by Title VII, Part A, Subpart 2 of the Improving America's Schools Act of 1994 (20 U.S.C. 7451–7452).

The Secretary has determined that the availability of this joint funding option would enhance the Department's ability to support projects that integrate into a single effort the development of assessments for all students and the modification of those assessments to take into account the needs of disabled and limited English proficient students.

Funds provided under Section 618 of IDEA can only be used for projects that modify, field-test, and evaluate assessments that take into account the needs of children and youth with disabilities. A project funded under Section 618 of IDEA should address how the assessments will improve the ability of SEAs and LEAs to provide full educational opportunities to children and youth with disabilities and to better assess the progress of children and youth with disabilities while in special education. As part of the post-award requirements for a project funded under Section 618 of IDEA, a grantee must prepare its procedures, findings, and other relevant information in a form that will maximize their dissemination and use, especially through dissemination networks and mechanisms authorized by Section 618, and in a form for inclusion in the annual report to Congress submitted pursuant to Section 618(g). Funds provided under Section 618 may be used to fund projects proposed by applicants that are private for-profit agencies only when necessary because of the unique nature of the study.

In accordance with 20 U.S.C. 7452(b)(4), funds provided under the Bilingual Education Research, Evaluation, and Dissemination Program must be administered by individuals with expertise in bilingual education and the needs of limited English proficient students and their families. Funds provided under this program must be used to improve bilingual education and special alternative instruction programs for children and youth of limited English proficiency.

As part of the efforts to improve student assessment, the Department made awards in FY 1995 under the Assessment Development and Evaluation Grants Program, authorized by section 220 of the Goals 2000: Educate America Act. Under this program, the Secretary provides grants to SEAs, LEAs or partnerships of such agencies to help defray the costs of developing, field-testing and evaluating State assessments aligned to State content standards. Applications involving 43 States were received in 1995 and grants were made to support 9 projects. The Secretary expects these projects to develop model strategies for the assessment of student learning that will have a significant impact on State and local level systemic reform efforts.

Depending on the availability of funds in FY 1996 and subsequent years, the Secretary may decide to use funds under the final priorities to continue projects initially funded under the Assessment Development and Evaluation Grants program or to fund additional applications considered in the 1995 competition. Alternatively, the Secretary may decide to hold a

competition for new awards under the final priorities.

Funding of particular projects depends on the availability of funds and the quality of the applications received. The publication of these final priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

On December 12, 1995 the Secretary published a notice of proposed priorities for this program in the Federal Register (60 FR 63691).

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition will be published in the Federal Register at a later date.

Public Comment

In the notice of proposed priorities, the Secretary invited comments on the proposed priorities. Fourteen parties submitted written comments. All 14 commenters expressed interest in the Department holding a competition under the proposed priorities. Only two of the commenters suggested any changes. The Secretary has made no changes in these proposed priorities since publication of the notice of proposed priorities.

Comments: Two commenters recommended changes that they thought would broaden eligibility and reduce costs for developing assessments. One commenter indicated that Absolute Priority 1 should ''not preclude the use of existing assessments with or without appropriate adaptations and modifications. A State should have the opportunity to review existing assessments and determine the extent that such measures are aligned to content standards or can be adapted to meet the content standards.''

Discussion: The Secretary agrees that applicants may propose to evaluate and field-test existing State assessments as well as develop new or partially new State assessments. The projects may also propose to develop, evaluate, and field test adaptations and accommodations to either new or existing State assessments as long as such assessments are aligned to challenging State content standards. We believe that the modification of existing State assessments is fully covered by Absolute Priority 1 language.

Changes: None.

Comments: One commenter recommended changes to make the validity requirements more specific. The commenter emphasized the importance of two concerns: the validity of each assessment for its intended purposes and the appropriateness of each assessment for all students. The commenter called for detailed discussion of validity issues in each proposal, including discussion of existing evidence or specification of forms of evidence that would be produced under the project.

Discussion: The Secretary agrees that validity is important but does not believe that additional specification is required in the absolute priority. The Secretary believes that validity discussion in each proposal will be evaluated in the peer review process.

Changes: None.

Comments: One commenter recommended changes to add another selection criterion that should be considered in making awards. The commenter called for giving preference to applicants proposing to ''provide some level of comparison of students across States or LEAs having different content standards.''

Discussion: The Secretary believes that the suggested change would give a preference to comparisons where States have different content standards. This change is undesirable because it would have the effect of penalizing comparisons where the same content standards are in place. Projects calling for either type of comparison are eligible for awards under this competition but neither should be given a preference.

Changes: None.

Absolute Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to projects that meet one or more of the following priorities. The Secretary will fund only projects that meet one or more of these absolute priorities:

Absolute Priority 1—Projects that develop, field-test, and evaluate assessments that are aligned to State content standards.

Absolute Priority 2—Projects that modify, field-test, and evaluate assessments to address the needs of children and youth with disabilities or limited English proficiency. Assessments to be modified must be those developed under priority (1) or similar assessments developed for all students and aligned to State content standards.

All projects must—

(a) Examine the validity and reliability of the assessment for the particular purposes for which the assessment was developed;

(b) Ensure that the assessment is consistent with relevant, nationally recognized professional and technical standards for assessments;

(c) Devote special attention to how the assessment treats all students, especially with regard to race, gender, ethnicity, disability, and language proficiency of those students; and

(d) Be developed by, or under the direction of, an SEA, LEA, or consortia of those agencies.

Selection Criteria

With respect to new awards made with funds from Section 618 of IDEA, the Secretary does not intend to use the selection criteria in 34 CFR 327.31. With respect to any new awards made with funds from the Bilingual Education Research, Evaluation, and Dissemination Program, the Secretary does not intend to use the selection criteria in 34 CFR 75.210. The Secretary intends to use the evaluation criteria in 34 CFR Part 700 to select all new awards under these priorities.

Applicable Program Regulations: (a) 34 CFR part 327, with the exception of 34 CFR 327.31; and (b) the final regulations for the Standards for the Conduct and Evaluation of Activities Carried Out by the Office of Educational Research and Improvement (OERI)—Evaluation of Applications for Grants and Cooperative Agreements and Proposals for Contracts, published on September 14, 1995 in the Federal Register (60 FR 47808) and to be codified as 34 CFR Part 700.

Authority: 20 U.S.C. 8001.

(Catalog of Federal Domestic Assistance Number 84.215L—Fund for the Improvement of Education Program)

Dated: March 26, 1996.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 96–7783 Filed 3–29–96; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday
April 1, 1996

Part V

Department of Housing and Urban Development

24 CFR Part 200, et al.

Streamlining of the FHA Single Family Housing, and Multifamily Housing and Health Care Facility Mortgage Insurance Programs Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200, 207, 213, 215, 219, 220, 221, 222, 231, 232, 233, 234, 236, 237, 241, 242, 244, 248, 265, and 267

[Docket No. FR–3966–F–01]

RIN 2502–AG58

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Streamlining of the FHA Single Family Housing, and Multifamily Housing and Health Care Facility Mortgage Insurance Programs Regulations

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for certain of the FHA Single Family Housing, Multifamily Housing, and Health Care Facility Mortgage Insurance Programs. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline certain Single Family Housing, and Multifamily Mortgage Insurance Program regulations by eliminating regulatory provisions that are redundant of statutes, are obsolete, or are otherwise unnecessary.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Eliot Horowitz, Office of Housing, Development of Housing and Urban Development, Room 9110, 451 Seventh Street SW., Washington, DC 20410, telephone number (202) 708–0579 (this not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, HUD conducted a page-by-page review of its regulations to determine which regulations could be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for certain of the FHA programs can be improved and streamlined by eliminating obsolete and unnecessary provisions, and by consolidating provisions that are repeated throughout several of the FHA program regulations.

Several provisions in the regulations repeat statutory language from the National Housing Act, as amended. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully binding. Furthermore, if regulations merely repeat statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference.

Several other provisions in the regulations apply to more than one program, and therefore HUD repeated these provisions in different subparts. This repetition is unnecessary, and updating these scattered provisions is cumbersome and often creates confusion. Therefore, this final rule will consolidate these duplicative provisions, maintaining appropriate cross-references for the reader's convenience.

Some provisions in the regulations are now obsolete and these will be removed.

Lastly, some provisions in the regulations are not regulatory requirements. For example, several sections in the regulations contain nonbinding guidance or explanations. While this information is very helpful to recipients, HUD will more appropriately provide this information through handbook guidance or other materials rather than maintain it in the CFR.

Specifically, the following changes are made by this rulemaking:

Part 200, Subpart A. Part 200 is amended to include a new subpart A that will consolidate those requirements that are common to all of HUD's Multifamily and Hospital Mortgage Insurance Programs.

Part 200, Regulatory Provisions Concerning Multifamily Processing Fees. Certain provisions pertaining to multifamily processing fees, § 200.40 (HUD fees) and § 200.45 (Processing of applications), are set forth in a final rule published elsewhere in today's Federal Register.

Part 200, Subpart E. Part 200 is also amended to make the following changes to subpart E.

Sections 200.140–200.152 concerning underwriting requirements are not needed in this general part, except for § 200.145(c)(1). The provisions being removed are either obsolete or better addressed in program-specific regulations. Section 200.145(c)(1) is retained in modified form. Section 200.145 provides that HUD's underwriting requirement for an appraisal and inspection, including environmental, in no way constitutes a guarantee by HUD as to the value or condition of the property.

Section 200.153 pertaining to presentation of claim is revised to remove obsolete reference to location of claim application forms and to update the reference to what may occasion a claim, since certain types of claims are occasioned by events other than the borrower's default.

Section 200.154 pertaining to notice of default is removed because requirements for notifying HUD of a default are more appropriately covered in the program-specific parts; for example, see §§ 203.332 and 207.256.

Section 200.155 pertaining to claim requirements is removed because there is no one general rule; program-specific parts cover these requirements. (See §§ 203.350 and following of the Single Family Mortgage Insurance Program regulations and §§ 207.258 and 207.259 for Multifamily Mortgage Insurance Program regulations.)

Section 200.156 pertaining to settlement of claims is revised to remove unnecessary detail and to retain only the appropriate general language. In addition, a provision is added to address the infrequent claims in negative amounts and to provide that the mortgagee may settle a claim in a negative amount by payment of cash or surrender of debentures, just as mortgagees may pay mortgage insurance premiums in cash or debentures (see §§ 203.259 and 207.252(f)).

Sections 200.157–200.162 are retained without revision because they contain necessary general information not contained elsewhere.

Part 200, Subpart K. Part 200 is also amended to remove subpart K. Subpart K, which pertains to Correction of Structural Defects, contains provisions that are outdated and no longer in use. Subpart K also contains non-binding guidance that is more appropriately provided through means other than codification in the CFR, which would allow HUD to more easily update and keep this information current.

Part 207 is amended by revising subpart A to remove the existing regulatory provisions and to provide for cross-referencing to new subpart A in part 200. New subpart A now contains the eligibility provisions for HUD's Multifamily and Health Care Facility Mortgage Insurance Program. Part 207 is also amended by revising subpart B to remove § 207.51 which contains definitions. The definitions are now in new subpart A of part 200. Additionally, subpart B of part 207 is amended to remove the following sections: § 207.254 (Insurance Endorsement), now incorporated in § 200.1; and §§ 207.260 (Protection of Mortgage Security), 207.261 (Assignment of Insured

Mortgages), 207.261a (Actions To Be Taken by Mortgagee), 207.262 (No Vested Right in Fund), and 207.270 (Special Reinsurance Provisions), all of which are now obsolete or provide non-binding guidance that can be provided through more accessible means, such as mortgagee letters.

Part 213. Part 213, which pertains to Cooperative Housing Mortgage Insurance, is amended by revising subpart A to remove the regulatory provisions pertaining to eligibility requirements and to provide a cross-reference to new subpart A in part 200.

Part 215. Part 215 which pertains to the Rent Supplement Payments Program will be removed. New rent supplement contracts are no longer authorized under this program. Reference to the regulations of part 215 and a savings clause will be included in new § 200.1301 of subpart W in part 200. This new section was added by HUD's final rule published on September 11, 1995 (60 FR 47260, see 47262). All of the existing projects and rent supplement contracts will remain subject to the part 215 regulations that were in existence immediately prior to the effective date of this final rule.

Part 219. Part 219 which pertains to HUD's Flexible Subsidy Program will be removed. HUD's Flexible Subsidy is an expiring program. Funding formerly available under the Flexible Subsidy Program is gradually being replaced by comprehensive needs assessment funding. The current regulations merely repeat the statutory requirements and the guidance which is contained in HUD's Handbook applicable to the Flexible Subsidy Program. The existing regulatory provisions in part 219 will be removed and replaced with a savings clause.

Part 220. Part 220, which pertains to Mortgage Insurance and Insured Improvement Loans for Urban Renewal and Concentrated Development Areas, is amended by revising subpart C to remove the regulatory provisions pertaining to eligibility requirements and to provide a cross-reference to new subpart A in part 200.

Part 221. Part 221, which pertains to Low Cost and Moderate Income Mortgage Insurance, is amended by revising subpart C to remove the regulatory provisions pertaining to eligibility requirements for multifamily projects and to provide a cross-reference to new subpart A in part 200.

Part 222. Part 222 which pertains to Servicepersons Mortgage Insurance Program is an expired program. No more mortgages are insured under this program. The part will be removed and a savings clause will be retained.

Part 231. Part 231, which pertains to Housing Mortgage Insurance for the Elderly, is amended by revising subpart A to remove the regulatory provisions pertaining to eligibility requirements and to provide a cross-reference to new subpart A in part 200.

Part 232. Part 232, which pertains to Mortgage Insurance for Nursing Homes, Intermediate Care Facilities and Board and Care Homes, is amended by revising subpart A to remove the regulatory provisions concerning eligibility requirements and to provide a cross-reference to new subpart A in part 200.

Part 233. Part 233 which pertains to Experimental Housing Mortgage Insurance is being amended to remove the outdated cross-references provided in certain of the regulatory sections.

Part 234. Part 234, which pertains to Condominium Ownership Mortgage Insurance, is amended by revising subpart C to remove the regulatory provisions pertaining to eligibility requirements for project blanket mortgages and to provide a cross-reference to new subpart A in part 200. In addition, the reservation of §§ 234.11, 234.12, and 234.13 is removed.

Part 236. Part 236, which pertains to Mortgage Insurance and Interest Reduction Payments for Rental Projects, is amended by revising subpart A to advise that a moratorium against issuance of commitments to insure new mortgages under section 236 was imposed January 5, 1973. Accordingly, the eligibility requirements in subpart A will be removed and replaced by a savings clause.

Part 237. Part 237 which pertains to Special Mortgage Insurance for Low and Moderate Income Families is removed. Reference to the regulations of part 237 and a savings clause will be included in new § 200.1301 of subpart W in part 200.

Part 241. Part 241, which pertains to Supplemental Financing for Insured Project Mortgages, is amended by revising subpart A to remove the regulatory provisions pertaining to eligibility requirements and to provide a cross-reference to new subpart A in part 200.

Part 242. Part 242, which pertains to Mortgage Insurance for Hospitals, is amended by revising subpart A to remove the regulatory provisions pertaining to eligibility requirements and to provide a cross-reference to new subpart A in part 200.

Part 244. Part 244, which pertains to Mortgage Insurance for Group Practice facilities (Title XI), is amended by revising subpart A to remove the regulatory provisions pertaining to eligibility requirements and to provide a cross-reference to new subpart A in part 200.

Part 248. Part 248 pertaining to Prepayment of Low Income Housing Mortgage is amended by removing § 248.7. This section contains waiver authority which authority for all programs is contained in new part 5.

Part 265. Part 265, which pertains to ''Transfer from Nonprofit to Profit-Motivated Ownership for Multifamily Housing Projects with HUD-Insured or HUD-Held Mortgages'' is removed. Part 265 does not involve a loan or insurance program. This part merely sets out in the regulation administrative guidelines for the transfer of physical assets from a nonprofit owner to a for-profit owner. These guidelines, which are not regulations, will be made available through means other than the CFR.

Part 267. Part 267, which pertains to Appraisal and Property Valuation, will be removed. The standards and requirements that are applicable to HUD insured single family and multifamily properties are set forth in contracts or handbooks, and need not be repeated in the CFR. However, the nondiscrimination provisions in part 267 which pertain to the selection of the appraiser, and the appraisal of the property will be retained in § 200.35 of part 200.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if 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). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes obsolete and unnecessary regulatory provisions, and consolidates repetitive requirements, and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by

removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

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 implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This 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, Office of the General Counsel, Department of Housing and Urban Development Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that 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. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or 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.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 219

Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 222

Condominiums, Military personnel, Mortgage insurance.

24 CFR Part 231

Aged, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 233

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 237

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 244

Health facilities, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 248

Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 265

Mortgage insurance.

24 CFR Part 267

Appraisals, Mortgage insurance, Property valuation, Reporting and recordkeeping requirements.

Accordingly, chapter II of title 24 of the Code of Federal Regulations is amended as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701—1715z–18; 42 U.S.C. 3535(d).

2. The part heading for part 200 is revised to read as set forth above.

§ 200.1 [Redesignated]

3. Undesignated introductory text is added to part 200 to read as follows:

This part sets forth requirements that are applicable to several of the programs of the Federal Housing Administration, an organizational unit within the Department of Housing and Urban Development. Program requirements applicable to FHA programs and other HUD programs also can be found in 24 CFR part 5. The specific program regulations should be consulted to determine which requirements in this part 200 or 24 CFR part 5 are applicable.

4. Subpart A is added to read as follows:

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Subpart A—Requirements For Application, Commitment and Endorsement Generally Applicable to Multifamily and Health Care Facility Mortgage Insurance Programs

§ 200.3 Definitions.

(a) The definitions ''*Department*'', ''*Elderly person*'', ''*HUD*'', and ''*Secretary*'', as used in this subpart A shall have the meanings given these definitions in 24 CFR part 5.

(b) The terms ''*first mortgage*'', ''*hospital*'', ''*maturity date*'', ''*mortgage*'', ''*mortgagee*'', and ''*state*'', as used in this subpart A shall have the meaning given in the section of the National Housing Act (12 U.S.C. 1701), as amended, under which the project mortgage is insured.

(c) As used in this subpart A:

Act means the National Housing Act, (12 U.S.C. 1701) as amended.

Commissioner means the Federal Housing Commissioner.

FHA means the Federal Housing Administration.

Insured mortgage means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner, or the Commissioner's duly authorized representative.

Project means a property consisting of site, improvements and, where permitted, equipment meeting the provisions of the applicable section of the Act, other applicable statutes and regulations, and terms, conditions and standards established by the Commissioner.

Eligible Mortgagor

§ 200.5 Eligible mortgagor.

The mortgagor shall be a natural person or entity acceptable to the Commissioner, as limited by the applicable section of the Act, and shall possess the powers necessary and incidental to operating the project.

§ 200.6 Employer identification and social security numbers.

The requirements set forth in 24 CFR part 5, regarding the disclosure and verification of social security numbers and employer identification numbers by applicants and participants in assisted mortgage and loan insurance and related programs, apply to these programs.

Eligible Mortgagee

§ 200.10 Lender requirements.

The requirements set forth in 24 CFR part 202 regarding approval, recertification, withdrawal of approval, termination of approval agreement, approval for servicing, report requirements and conditions for supervised mortgagees, nonsupervised mortgagees, investing mortgagees, governmental institutions, national mortgage associations, public housing agencies and State housing agencies, apply to these programs.

§ 200.11 Audit requirements for State and local governments as mortgagees.

Requirements set forth in 24 CFR part 44, Non-Federal Governmental Audit Requirements, apply to State and local governments (as defined in 24 CFR part 44) that receive mortgage insurance as mortgagees.

Eligible Mortgage

§ 200.15 Maximum mortgage.

Mortgages must not exceed either the statutory dollar amount or loan ratio limitations established by the section of the Act under which the mortgage is insured, except that the Commissioner may increase the dollar amount limitations:

(a) By not to exceed 110 percent in any geographical area in which the Commissioner finds that cost levels so require; and

(b) By not to exceed 140 percent where the Commissioner determines it necessary on a project-by-project basis.

§ 200.16 Project mortgage adjustments and reductions.

The principal amount computed in accordance with the applicable section of the Act for the insured mortgage shall be subject to additional adjustments and reductions in accordance with terms and conditions established by the Commissioner.

§ 200.17 Mortgage coverage.

The mortgage shall cover the entire property included in the project.

§ 200.18 Minimum loan prohibition.

A mortgagee may not require that the mortgage exceed a minimum amount established by the mortgagee, as a condition of providing a loan secured by a mortgage insured under this part.

Miscellaneous Project Mortgage Insurance

§ 200.20 Refinancing insured mortgages.

An existing insured mortgage may be refinanced pursuant to provisions of section 223(a)(7) of the Act and such terms and conditions established by the Commissioner.

§ 200.21 Reinsurance of Commissioner held mortgages.

Any mortgage assigned to the Commissioner in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by the Commissioner of any property acquired under any section or title of the Act, may be insured pursuant to provisions of section 223(c) of the Act and such terms and conditions established by the Commissioner.

§ 200.22 Operating loss loans.

An insured loan to cover the operating losses of a project with an existing Commissioner insured mortgage may be made in accordance with provisions of section 223(d) of the Act and such terms and conditions established by the Commissioner.

§ 200.23 Projects in declining neighborhoods.

A Mortgage financing the repair, rehabilitation or construction of a project located in an older declining urban area shall be eligible for insurance pursuant to provisions of section 223(e) of the Act and such terms and conditions established by the Commissioner.

§ 200.24 Existing projects.

A mortgage financing the purchase or refinance of an existing rental housing project under section 207 of the Act, or for refinancing the existing debt of an existing nursing home, intermediate care facility, assisted living facility or board and care home, or any combination thereof, under section 232 of the Act, or hospital under section 242 of the Act may be insured pursuant to provisions of section 223(f) of the Act and such terms and conditions established by the Commissioner.

§ 200.25 Supplemental loans.

A loan, advance of credit or purchase of an obligation representing a loan or advance of credit made for the purpose of financing improvements or additions to a project covered by a mortgage insured under any section of the Act or Commissioner held mortgage, or equipment for a nursing home, intermediate care facility, board and care home, assisted living facility, hospital or group practices facility, may be insured pursuant to the provisions of section 241 of the Act and such terms and conditions established by the Commissioner.

Miscellaneous Cross Cutting Regulations

§ 200.30 Nondiscrimination and equal opportunity.

The requirements set forth in 24 CFR part 5, and subparts I, J, and M of this part pertaining to nondiscrimination and equal opportunity, apply to these programs.

§ 200.31 Debarment and suspension.

The requirements set forth in 24 CFR part 24, except subpart F, apply to these programs.

§ 200.32 Participation and compliance requirements.

The requirements set forth in 24 CFR part 200, subpart H, apply to these programs.

§ 200.33 Labor standards

(a) The requirements set forth in 29 CFR parts 1, 3 and 5 for compliance with labor standards laws apply to projects under these programs to the extent that labor standards apply as provided in section 212 of the Act, provided that:

(1) The labor standards provisions do not apply to projects insured under sections 207 or 232 pursuant to section 223(f) of the Act; and

(2) Supplemental loans under section 241 of the Act are subject to the provisions of section 212 applicable to the section or title pursuant to which the mortgage covering the project is insured or pursuant to which the original mortgage was insured.

(b) The requirements set forth in 24 CFR part 70 apply to those programs with respect to which there is a statutory provision allowing HUD waiver of Davis-Bacon prevailing wage rates for volunteers.

(c) Project commitments, contracts and agreements, as determined by the Commissioner, and construction contracts and subcontracts, shall include terms, conditions and standards for compliance with applicable requirements set forth in 29 CFR parts 1, 3 and 5 and section 212 of the Act.

(d) No advance under a loan or mortgage that is subject to the requirements of section 212 shall be eligible for insurance unless there is filed with the application for the advance a certificate as required by the Commissioner certifying that the laborers and mechanics employed in construction of the project have been paid not less than the wage rates required under section 212.

§ 200.34 Property and mortgage assessment.

The requirements set forth in 24 CFR part 200, subpart E, regarding the mortgagor's responsibility for making those investigations, analysis and inspections it deems necessary for protecting its interests in the property apply to these programs.

§ 200.35 Appraisal standards—nondiscrimination requirements.

(a) *Nondiscrimination in the selection of appraiser.* In the selection of an appraiser, there shall be no discrimination on the basis of race, color, religion, national origin, sex, age, or disability.

(b) *Nondiscrimination in appraisal determination.* The certification required by the Uniform Standards of Professional Appraisal Practice must include a statement that the racial/ethnic composition of the neighborhood surrounding the property in no way affected the appraisal determination.

Fees and Charges

§ 200.40 HUD fees. [Reserved]

§ 200.41 Maximum mortgagee fees and charges.

(a) Mortgagee fees and charges included in the mortgage must be for actual required services provided to the mortgagor by the mortgagee, and shall not exceed common market rates for such services as determined by the Commissioner.

(b) Mortgagee charges for prepayment of the mortgage and late mortgage payments shall not exceed that determined appropriate by the Commissioner.

Commitment Applications

§ 200.45 Processing of applications. [Reserved]

§ 200.46 Commitment issuance.

Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured. The commitment term and any extension or reopening of an expired commitment shall be in accordance with standards established by the Commissioner.

§ 200.47 Firm commitments.

A valid firm commitment must be in effect at the time the mortgage instrument is endorsed.

(a) *Insurance upon completion.* The commitment shall provide the terms and conditions for the insurance of the mortgage:

(1) After completion of construction or substantial rehabilitation of the project; or

(2) Upon completion of required work, except as deferred by the Commissioner in accordance with terms, conditions and standards established by the Commissioner, for an existing project without substantial rehabilitation.

(b) *Insured advances.* The commitment shall provide for insurance of the mortgage as provided in paragraph (a) of this section, and for the insurance of mortgage money advanced in accordance with terms and conditions established by the Commissioner during: construction; substantial rehabilitation; or other work acceptable to the Commissioner.

Requirements Incident to Insured Advances

§ 200.50 Building loan agreement.

The mortgagor and mortgagee must execute a building loan agreement approved by the Commissioner, that sets forth the terms and conditions under which progress payments may be advanced during construction, before initial endorsement of the mortgage for insurance.

§ 200.51 Mortgagee certificate.

The mortgagee shall certify to the Commissioner that it will conform with terms and conditions established by the Commissioner for the mortgagee's control of project funds, and other incidental requirements established by the Commissioner.

§ 200.52 Construction contract.

The form of contract between the mortgagor and builder shall be as prescribed by the Commissioner in accordance with terms and conditions established by the Commissioner.

§ 200.53 Initial operating funds.

The mortgagor shall deposit cash with the mortgagee, or in a depository satisfactory to the mortgagee and under control of the mortgagee, in accordance with terms, conditions and standards established by the Commissioner for:

(a) Accruals for taxes, ground rates, mortgage insurance premiums, and property insurance premiums, during the course of construction;

(b) Meeting the cost of equipping and renting the project subsequent to its completion in whole or part; and

(c) Allocation by the mortgagee for assessments required by the terms of the mortgage in an amount acceptable to the Commissioner.

§ 200.54 Project completion funding.

The mortgagor shall deposit with the mortgagee cash deemed by the Commissioner to be sufficient, when added to the proceeds of the insured mortgage, to assure completion of the project and to pay the initial service charge, carrying charges, and legal and organizational expenses incident to the construction of the project. The Commissioner may accept a lesser cash deposit or an alternative to a cash deposit in accordance with terms and conditions established by the Commissioner, where the required funding is to be provided by a grant or loan from a Federal, State, or local government agency or instrumentality.

(a) An agreement acceptable to the Commissioner shall require that funds provided by the mortgagor under requirements of this section must be disbursed in full for project work, material and incidental charges and expenses before disbursement of any mortgage proceeds, except;

(b) Funds provided by a grant or loan from a Federal, State or local governmental agency or instrumentality under requirements of this section need not be fully disbursed before the disbursement of mortgage proceeds, where approved by the Commissioner in accordance with terms, conditions and standards established by the Commissioner.

§ 200.55 Financing fees and charges.

Fees and charges approved by the Commissioner in excess of the initial service charge shall be deposited with the mortgagee in cash before initial endorsement, except as otherwise preapproved by the Commissioner.

§ 200.56 Assurance of completion for on-site improvements.

The mortgagor shall furnish assurance of completion of the project in the form and amount provided by terms, conditions and standards established by the Commissioner.

General Requirements

§ 200.60 Assurance of completion for offsite facilities.

An assurance of completion for offsite utilities, streets, and other facilities required for a buildable site shall be provided in an amount and form acceptable to the Commissioner, except where a municipality or other public body has, in a manner acceptable to the Commissioner, agreed to install such improvements without cost to the mortgagor.

§ 200.61 Title.

(a) Marketable title to the project must be vested in the mortgagor as of the date the mortgage is filed for record.

(b) Title evidence for the Commissioner's examination shall include a lender's title insurance policy, which title policy provides survey coverage based on a survey acceptable to the title company and the Commissioner; or as the Commissioner may otherwise require, in accordance with terms, conditions and standards established by the Commissioner.

(c) Endorsement of the credit instrument for insurance shall evidence the acceptability of title evidence.

§ 200.62 Certifications.

Any agreement, undertaking, statement or certification required by the Commissioner shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the FHA, and of the Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

§ 200.63 Required deposits and letters of credit.

(a) *Deposits.* Where the Commissioner requires the mortgagor to make a deposit of cash or securities, such deposit shall be with the mortgagee or a depository acceptable to the mortgagee. The deposit shall be held by the mortgagee in a special account or by the depository under an appropriate agreement approved by the Commissioner.

(b) *Letter of credit.* Where the use of a letter of credit is acceptable to the Commissioner in lieu of a deposit of cash or securities, the letter of credit shall be issued to the mortgagee by a

banking institution and shall be unconditional and irrevocable:

(1) The mortgagee of record may not be the issuer of any letter of credit without the prior written consent of the Commissioner.

(2) The mortgagee shall be responsible to the Commissioner for collection under the letter of credit. In the event a demand for payment thereunder is not immediately met, the mortgagee shall immediately provide a cash deposit equivalent to the undrawn balance of the letter of credit.

Property Requirements

§ 200.70 Location and fee interest.

The property must be held by an eligible mortgagor, and must conform with requirements pertaining to property location and fee or lease interests of the section of the Act under which the mortgage is insured.

§ 200.71 Liens.

The project must be free and clear of all liens other than the insured mortgage, except that the property may be subject to an inferior lien as provided by terms and conditions established by the Commissioner for an inferior lien:

(a) Made or held by a Federal, State or local government instrumentality;

(b) Required in connection with: an operating loss loan insured pursuant to a section 223(d) of the Act; a supplemental loan insured pursuant to section 241 of the Act; or a mortgage to purchase or refinance an existing project pursuant to section 223(f) of the Act; or

(c) As otherwise provided by the Commissioner.

§ 200.72 Zoning, deed and building restrictions.

The project when completed shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental codes, ordinances, regulations and requirements.

§ 200.73 Property development.

(a) The property shall be suitable and principally designed for the intended use, as provided by the applicable section of the Act under which the mortgage is insured, and have long-term marketability. Design, construction, substantial rehabilitation and repairs shall be in accordance with standards established by the Commissioner.

(b) A project may include such commercial and community facilities as the Commissioner deems acceptable.

(c) The improvements shall constitute a single project. Not less than five rental dwelling units or personal care units, 20 medical care beds, or 50 manufactured home pads, shall be on one site, except that such limitations do not apply to group practice facilities.

§ 200.74 Minimum property standards.

The requirements set forth in subpart S of this part apply to these programs, except for hospitals insured under section 242 of the Act and group practice facilities insured under title XI of the Act.

§ 200.75 Environmental quality determinations and standards.

Requirements set forth in 24 CFR part 50, Protection and Enhancement of Environmental Quality, 24 CFR part 51, Environmental Criteria and Standards, 24 CFR part 55, Implementation of Executive Order 11988, Flood Plain Management, and as otherwise required by the Commissioner apply to these programs.

§ 200.76 Smoke detectors.

Smoke detectors and alarm devices must be installed in accordance with standards and criteria acceptable to the Commissioner for the protection of occupants in any dwelling or facility bedroom or other primary sleeping area.

§ 200.77 Lead-based paint poisoning prevention.

Requirements set forth in 24 CFR part 35 apply to these programs.

§ 200.78 Energy Conservation.

Construction, mechanical equipment, and energy and metering selections shall provide cost effective energy conservation in accordance with standards established by the Commissioner.

Mortgage Provisions

§ 200.80 Mortgage form.

The mortgage shall be:

(a) Executed on a form approved by the Commissioner for use in the jurisdiction in which the property securing the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(b) Executed by an eligible mortgagor.

(c) A first lien on the property securing the mortgage, which property conforms with the property standards prescribed by the Commissioner.

§ 200.81 Disbursement of mortgage proceeds.

The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage to the:

(a) Mortgagor or mortgagor's account;

(b) Mortgagor's creditors for the mortgagor's account, subject to the mortgagor's consent.

§ 200.82 Maturity.

The mortgage shall have a maturity satisfactory to the Commissioner, and shall contain complete amortization or sinking-fund provisions satisfactory to the Commissioner.

(a) The maximum mortgage term may not exceed the lesser of:

(1) Any limits included under the applicable section of the Act.

(2) Thirty-five years for existing projects, except that the mortgage term may be up to 40 years under terms and conditions established by the Commissioner, and 40 years for proposed construction and substantial rehabilitation projects.

(3) Seventy-five percent of the estimated remaining economic life of the physical improvements.

(b) The minimum mortgage term shall not be less than 10 years.

§ 200.83 Interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) Interest shall be payable in monthly installments on the principal amount of the mortgage outstanding on the due date of each installment.

(c) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of the amount that the Commissioner had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

§ 200.84 Payment requirements.

The mortgage shall provide for:

(a) A single aggregate payment each month for all payments to be made by the mortgagor to the mortgagee.

(b) The mortgagor to pay to the mortgagee:

(1) Interest and principal on the first day of each month in accordance with an amortization plan agreed upon by the mortgagor, the mortgagee and the Commissioner.

(i) Date of first payment to interest shall be the endorsement date or, where there are insured advances, the initial endorsement date.

(ii) Date of first payment to principal. The Commissioner shall estimate the time necessary to complete the project and shall establish the date of the first payment to principal so that the lapse of time between completion of the project and commencement of amortization will not be longer than

necessary to obtain sustaining occupancy.

(2) An amount on each interest payment date sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(3) Equal monthly payments as will amortize the ground rents, if any, and the estimated amount of all taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent.

(4) The mortgage shall further provide:

(i) That such payments shall be held by the mortgagee, for the purpose of paying such items before they become delinquent.

(ii) For adjustments in case such estimated amounts shall prove to be more, or less, than the actual amounts so paid therefor by the mortgagor.

(c) The mortgagee to apply each mortgagor payment received to the following items in the order set forth:

(1) Premium charges under the contract of mortgage insurance.

(2) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums.

(3) Interest on the mortgage.

(4) Amortization of the principal of the mortgage.

§ 200.85 Covenant against liens.

(a) The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such inferior lien as may be approved by the Commissioner in accordance with provisions of § 200.71; and

(b) A covenant against repayment of a Commissioner approved inferior lien from mortgage proceeds other than surplus cash or residual receipts, except in the case of an inferior lien created by an operating loss loan insured pursuant to section 223(d) of the Act, or a supplemental loan insured pursuant to section 241 of the Act.

§ 200.86 Covenant for fire and other hazard insurance.

The mortgage shall contain a covenant binding the mortgagor to maintain fire and extended coverage insurance on the property in accordance with terms and conditions established by the Commissioner.

§ 200.87 Mortgage prepayment.

(a) *Prepayment privilege.* Except as provided in paragraph (c) of this section or otherwise established by the Commissioner, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date, after giving the mortgagee 30 days' notice in writing in advance of its intention to so prepay.

(b) *Prepayment charge.* The mortgage may contain a provision for such charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and the mortgagee, subject to the following:

(1) The mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such charge.

(2) Any reduction in the original principal amount of the mortgage resulting from the certification of cost which the Commissioner may require shall not be construed as a prepayment of the mortgage.

(c) *Prepayment of bond-financed or GNMA securitized mortgages.* Where the mortgage is given to secure GNMA mortgage-backed securities or a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

(d) *HUD override of prepayment restrictions.* In the event of a default, the Commissioner may override any lockout, prepayment penalty or combination thereof in order to facilitate a partial or full refinancing of the mortgaged property and avoid a claim.

§ 200.88 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge in accordance with terms, conditions and standards of the Commissioner for each dollar of each payment to interest or principal more than 15 days in arrears to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

Cost Certification

§ 200.95 Certification of cost requirements.

(a) Before initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract, the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder.

(2) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over statutory limitations based on actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction contract shall not apply where the mortgagor is the general contractor.

§ 200.96 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and before final endorsement, except that in the case of an existing project that does not require substantial rehabilitation and where the commitment provides for completion of specified repairs after endorsement, a supplemental certificate of actual cost will be submitted covering the completed costs of any such repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, partners or other entity member ownership, of construction and other costs, as prescribed by the Commissioner.

(b) The Certificate of Actual Cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

(c) Upon the Commissioner's approval of the mortgagor's certification of actual cost such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

§ 200.97 Adjustments resulting from cost certification.

(a) *Fee simple site.* Upon receipt of the mortgagor's certification of actual cost

there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to the construction of the improvements.

(b) *Leasehold site.* In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event shall such amount be in excess of the fair market value of such leasehold or other interest exclusive of proposed improvements.

(c) *Adjustment.* If the amount calculated in accordance with paragraphs (a) or (b) of this section exceeds the statutory dollar amount limits or loan ratio limits permitted by the section of Act under which the mortgage is to be insured, or program loan ratio limits established by the Commissioner in the absence of statutory limits, the amount must be reduced to the applicable limits before final endorsement.

Endorsement

§ 200.100 Insurance endorsement.

The credit instrument shall be initially and finally endorsed simultaneously for insurance pursuant to a commitment to insure upon completion. Where the advances of construction funds are to be insured pursuant to a commitment for insured advances, initial endorsement of the credit instrument shall occur before any mortgage proceeds are insured and the time of final endorsement shall be as set forth in paragraph (b) of this section.

(a) *Initial endorsement.* The Commissioner shall indicate the insurance of the mortgage by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been met to the Commissioner's satisfaction the Commissioner shall indicate on the original credit instrument the total of all advances approved for insurance and again endorse such instrument.

(c) *Contract rights and obligations.* The Commissioner and the mortgagee or lender shall be bound from the date of initial endorsement, whether the initial and final endorsement occur simultaneously or are split, by the provisions of the Contract Rights and Obligations set forth in the respective regulations for each section of the Act, as follows: Section 207 of the Act (24 CFR part 207); Section 213 of the Act (24 CFR part 213); Section 220 of the Act (24 CFR part 220); Section 221 of the Act (24 CFR part 221); Section 231 of the Act (24 CFR part 231); Section 232 of the Act (24 CFR part 232); Section 234 of the Act (24 CFR part 234); Section 241 of the Act (24 CFR part 241); Section 242 of the Act (24 CFR part 242); title XI of the Act (24 CFR part 244).

§ 200.101 Mortgagor lien certificate.

The mortgagor shall certify at the final endorsement of the mortgage for insurance as to each of the following:

(a) That the mortgage is the first lien upon and covers the entire project, including any equipment financed with mortgage proceeds.

(b) That the property upon which the improvements have been made or constructed and the equipment financed with mortgage proceeds are free and clear of all liens other than the insured mortgage and such other liens as may be approved by the Commissioner.

(c) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the project or the purchase of the equipment financed with mortgage proceeds.

Regulation of Mortgagors

§ 200.105 Mortgagor supervision.

(a) As long as the Commissioner is the insurer or holder of the mortgage, the Commissioner shall regulate the mortgagor by means of a regulatory agreement providing terms, conditions and standards established by the Commissioner, or by such other means as the Commissioner may prescribe.

(b) The Commissioner may delegate to the mortgagee, or other party, in accordance with terms, conditions and standards established by the Commissioner in any executed Regulatory Agreement or other instrumentality granting the Commissioner supervision of the mortgagor.

§ 200.106 Low-income housing tax credits and other program assistance.

Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in HUD's regulations implementing the HUD Reform Act) may be regulated by the Commissioner as limited distribution mortgagors.

Subpart E—Mortgage Insurance Procedures and Processing

§§ 200.140 through 200.144, 200.146 through 200.152, 200.154, and 200.155 [Removed]

5. Sections 200.140 through 200.144, 200.146 through 200.152, 200.154, and 200.155, are removed.

5a. Sections 200.145, 200.153, and 200.156, are revised to read as follows:

§ 200.145 Property and mortgage assessment.

(a) The mortgagor is responsible for making those investigations, analyses and inspections it deems necessary for protecting its interests in the property.

(b) Any appraisals, inspections, environmental assessments, and technical or financial evaluations conducted by or for the Commissioner are performed to determine the maximum insurable mortgage, and to protect the Commissioner and the FHA insurance funds. Such appraisals, inspections, assessments and evaluations neither create nor imply a duty or obligation from HUD to the mortgagor, or to any other party, and are not to be regarded as a warranty by HUD to the mortgagor, or any other party, of the value or condition of the property.

§ 200.153 Presentation of claim.

In the event the insured lender is entitled under the contract of mortgage insurance to receive a claim settlement, the mortgagee presents a claim for insurance benefits in accordance with the Secretary's instructions.

§ 200.156 Settlement of claims.

Upon the Secretary's approval of a claim, the claim will be settled by issuance of cash, debentures or both, and, in certain cases, by issuance of a certificate of claim. However, in the event a final claim is in a negative amount, the claim will be settled by the mortgagee's payment of cash or surrender of debentures at par plus accrued interest to the Secretary.

Subpart K [Removed and Reserved]

6. Subpart K is removed and reserved.

7. In subpart W, § 200.1301 is revised to read as follows:

Subpart W—Administrative Matters

§ 200.1301 Additional Expiring Programs—Savings Clause.

No new loan assistance, additional participation, or new loans are being insured under the programs listed in this section. Any existing loan

assistance, ongoing participation, or insured loans under these programs will continue to be governed by the regulations in effect as they existed immediately before May 1, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219, and parts 220 to 400). A list of any amendments to these parts published after the CFR revision date is available from the Office of the Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC. 20410.

Part 215 Rent Supplement Payments Program

Part 222 Servicepersons Mortgage Insurance Program

Part 237 Special Mortgage Insurance for Low and Moderate Income Families

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

8. The authority citation for part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

9. Subpart A is revised to read as follows:

Subpart A—Eligibility Requirements

Sec.
207.1 Eligibility requirements.

Subpart A—Eligibility Requirements

§ 207.1 Eligibility requirements.

The eligibility requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 207 of the National Housing Act (12 U.S.C. 1713), as amended.

Subpart B—Contract Rights and Obligations

§§ 207.254, 207.260, 207.261, 207.261a, 207.262, and 207.270 [Removed]

9a. Sections 207.254, 207.260, 207.261, 207.261a, 207.262, and 207.270 are removed.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

10. The authority citation for part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

10a. Subpart A is revised to read as follows:

Subpart A—Eligibility Requirements—Projects

Sec.
213.1 Eligibility requirements.

Subpart A—Eligibility Requirements—Projects

§ 213.1 Eligibility requirements.

The eligibility requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 213 of the National Housing Act (12 U.S.C. 1715e), as amended.

PART 215—[REMOVED]

11. Part 215 is removed.

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

12. The authority citation for part 219 continues to read as follows:

Authority: 12 U.S.C. 1715z–1a; 42 U.S.C. 3535(d).

13. Part 219 is revised to read as follows:

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

Sec.
219.1 Program operations.
219.2 Savings provision.

§ 219.1 Program operations.

Effective May 1, 1996, the Flexible Subsidy Program for Troubled Projects will be governed and operate under the statutory provisions codified at 12 U.S.C. 1715z–1a, under the administrative policies and procedures contained in any applicable HUD Handbooks, and other administrative bulletins and notices as the Department may issue from time to time.

§ 219.2 Savings provision.

Part 219, as it existed immediately before May 1, 1996, (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219) will continue to govern the rights and obligations of housing owners, tenants, and the Department of Housing and Urban Development with respect to units and projects assisted under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996. A list of any amendments to this part published after the CFR revision date is available from the Office of the Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

14. The authority citation for part 220 continues to read as follows:

Authority: 12 U.S.C. 1713, 1715b, and 1715k; 42 U.S.C. 3535(d).

15. Subpart C is revised to read as follows:

Subpart C—Eligibility Requirements—Projects

Sec.
220.501 Eligibility requirements.

Subpart C—Eligibility Requirements—Projects

§ 220.501 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 220 of the National Housing Act (12 U.S.C. 1715k), as amended.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

16. The authority citation for part 221 continues to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b and 1715*l*; 42 U.S.C. 3535(d).

17. Subpart C is revised to read as follows:

Subpart C—Eligibility Requirements—Moderate Income Projects

Sec.
221.501 Eligibility requirements.

Subpart C—Eligibility Requirements—Moderate Income Projects

§ 221.501 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 221 of the National Housing Act (12 U.S.C. 1715l), as amended.

PART 222—[REMOVED]

18. Part 222 is removed.

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

19. The authority citation for part 231 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715v; 42 U.S.C. 3535(d).

20. Subpart A is revised to read as follows:

Subpart A—Eligibility Requirements

Sec.
231.1 Eligibility requirements.

Subpart A—Eligibility Requirements

§ 231.1 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 231 of the National Housing Act (12 U.S.C. 1715v), as amended.

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES

21. The authority citation for part 232 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715w, and 1715z(9); 42 U.S.C. 3535(d).

22. Subpart A is revised to read as follows:

Subpart A—Eligibility Requirements

Sec.
232.1 Eligibility requirements.
232.2 License.
232.3 Bathroom.

Subpart A—Eligibility Requirements

§ 232.1 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 232 of the National Housing Act (12 U.S.C. 1715w), as amended.

§ 232.2 License.

The Commissioner shall not insure any mortgage under this part unless the facility is regulated by the State, municipality or other political subdivision in which the facility is or is to be located, and the appropriate agency for such jurisdiction provides a license, certificate or other assurances the Commissioner considers necessary, that the facility complies with any applicable State or local standards and requirements for such facility.

§ 232.3 Bathroom.

Not less than one full bathroom must be provided for every four residents of a board and care home or assisted living facility, and bathroom access from any bedroom or sleeping area must not pass through a public corridor or area.

PART 233—EXPERIMENTAL HOUSING MORTGAGE INSURANCE

23. The authority citation for part 233 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715x; 42 U.S.C. 3535(d).

24. In § 233.5, paragraph (a) introductory text is revised to read as follows:

§ 233.5 Cross-reference.

(a) To be eligible for insurance under this subpart, a mortgage or home improvement loan shall meet the eligibility requirements for insurance under parts 203, 213, 220, 221, 234, 235, and 237 of this chapter.

* * * * *

25. In § 233.251, paragraph (b) introductory text is revised to read as follows:

§ 233.251 Cross-reference.

* * * * *

(b) For purposes of this subpart, all the references in parts 203, 213, 220, 221, 234, 235 and 237 of this chapter to:

* * * * *

26. Section 233.401 is revised to read as follows:

§ 233.401 Cross-reference.

(a) *Section 235 type home mortgages.* All of the provisions of 24 CFR part 235 concerning assistance payments pursuant to section 235 of the Act (12 U.S.C. 1715y), apply with full force and effect to a mortgage insured under subparts A and B of this part, if the mortgage is insured as meeting the eligibility requirements of 24 CFR part 235.

(b) *Section 237 type home mortgages.* All of the provisions of 24 CFR part 237 concerning assistance payments in connection with a mortgage insured under section 237, apply with full force and effect to a mortgage insured under subparts A and B of this part, if the mortgage is insured as meeting the eligibility requirements of 24 CFR part 237.

27. In § 233.505, paragraph (a) introductory text is revised to read as follows:

§ 233.505 Cross-reference.

(a) To be eligible for insurance under this subpart, a mortgage or project improvement loan shall meet the eligibility requirements for insurance under parts 207, 213, 220, 221, 231, 234, 235, or 241 of this chapter except that:

* * * * *

28. In § 233.751, paragraph (b) introductory text is revised to read as follows:

§ 233.751 Cross-reference.

* * * * *

(b) For purposes of this subpart, all the references in parts 207, 213, 220, 221, 231, 232, 234, 235, 236 and 241 of this chapter to:

* * * * *

29. Section 233.900 is revised to read as follows:

§ 233.900 Cross-reference.

(a) *Section 235(j) type home mortgages.* All of the provisions of 24 CFR part 235 concerning assistance payments pursuant to section 235(j) of the Act (12 U.S.C. 1701), apply with full force and effect to a mortgage insured under subparts D and E of this part, if the mortgage is insured as meeting the eligibility requirements of 24 CFR part 235.

(b) *Section 236 type home mortgages.* All of the provisions of 24 CFR part 236 concerning interest reduction payments pursuant to section 236 of the Act (12 U.S.C. 1701), apply with full force and effect to a mortgage insured under subparts D and E of this part, if the mortgage is insured as meeting the eligibility requirements of 24 CFR part 236.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

30. The authority citation for part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1707(a).

31. Subpart C is revised to read as follows:

Subpart C—Eligibility Requirements—Projects—Conversion Individual Sales Units

Sec.
234.501 Eligibility requirements.

Subpart C—Eligibility Requirements—Projects—Conversion Individual Sales Units

§ 234.501 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to blanket mortgages on condominium projects insured under section 234 of the National Housing Act (12 U.S.C. 1715y), as amended.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

32. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

33. Subpart A is revised to read as follows:

Subpart A—Eligibility Requirements for Mortgage Insurance

Sec.
236.1 Applicability and savings clause.

Subpart A—Eligibility Requirements for Mortgage Insurance

§ 236.1 Applicability and savings clause.

(a) *Applicability.* This section implements the eligibility requirements for mortgage insurance under the Rental and Cooperative Housing For Lower Income Families Program contained in section 236 of the National Housing Act (12 U.S.C. 1701), as amended. The program authorized the Secretary to insure mortgages to support new construction or rehabilitation of real property to be used primarily for residential rental purposes. A moratorium against issuance of commitments to insure new mortgages under section 236 was imposed January 5, 1973. Section 236(n) prohibits the insurance of mortgages under section 236 after November 30, 1983, except to permit the refinance of a mortgage insured under section 236, or to finance pursuant to section 236(j)(3), the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under section 236.

(b) *Savings clause.* Any mortgage approved by the Commissioner for insurance pursuant to sections 236(n) and 236(j)(3) of the National Housing Act, as amended, will be governed by subpart A of this part in effect immediately before May 1, 1996 contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499 and by subparts B through E of this part. A list of any amendments to this part published after the April 1, 1995 CFR revision date is available from the Office of the Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

PART 237—[REMOVED]

35. Part 237 is removed.

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

36. The authority citation for part 241 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–6; 42 U.S.C. 3535(d).

37. Subpart A is revised to read as follows:

Subpart A—Eligibility Requirements

Sec.
241.1 Eligibility requirements.

Subpart A—Eligibility Requirements

§ 241.1 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 241 of the National Housing Act (12 U.S.C. 1715z–6), as amended.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

37a. The authority citation for part 242 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(t), and 1715z–7; 42 U.S.C. 3535(d).

38. Subpart A is revised to read as follows:

Subpart A—Eligibility Requirements

Sec.
242.1 Eligibility requirements.
242.2 License.
242.3 Eligible hospital.

Subpart A—Eligibility Requirements

§ 242.1 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 242 of the National Housing Act (12 U.S.C. 1715z–7), as amended.

§ 242.2 License.

The Commissioner shall not insure any mortgage under this part unless the facility is regulated by the State, municipality or other political subdivision in which the facility is or is to be located, and the appropriate agency for such jurisdiction provides a license, certificate or other assurances the Commissioner considers necessary, that the facility complies with any applicable State or local standards and requirements for such facility.

§ 242.3 Eligible hospital.

The hospital to be financed with a mortgage insured under this part shall involve one of the following: the construction and equipping of a new hospital, rehabilitation of a hospital, the addition of new facilities or equipment, or the rehabilitation or replacement of a portion of an existing hospital structure.

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES (TITLE XI)

39. The authority citation for part 244 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1749aaa–5; 42 U.S.C. 3535(d).

40. Subpart A is revised to read as follows:

Subpart A—Eligibility Requirements

Sec.
244.1 Eligibility requirements.
244.2 License.

Subpart A—Eligibility Requirements

§ 244.1 Eligibility requirements.

The requirements set forth in 24 CFR part 200, subpart A, apply to group practice facilities (title XI) of the National Housing Act (12 U.S.C. 1749aaa), as amended.

§ 244.2 License.

The Commissioner shall not insure any mortgage under this part unless the appropriate licensing agency for the State, municipality or other political subdivision in which a project is or is to be located provides such assurances as the Commissioner considers necessary that the facility will comply with any applicable State or local standards and requirements for such facilities.

PART 248—PREPAYMENT OF LOW INCOME HOUSING MORTGAGES

41. The authority citation for part 248 continues to read as follows:

Authority: 12 U.S.C. 1715l note, 4101 note, and 4101–4124; 42 U.S.C. 3535(d).

§ 248.7 [Removed]

42. Section 248.7 is removed.

PART 265—[REMOVED]

43. Part 265 is removed.

PART 267—[REMOVED]

44. Part 267 is removed.

Dated: March 15, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–7488 Filed 3–29–96; 8:45 am]

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Federal Register

Monday
April 1, 1996

Part VI

Department of Housing and Urban Development

24 CFR Parts 200, 232, and 241

Office of the Assistant Secretary for Housing—Federal Housing Commissioner: Revision of FHA Multifamily Processing and Fees; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200, 232, and 241

[Docket No. FR–3349–F–02]

RIN 2502–AF74

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Revision of FHA Multifamily Processing and Fees

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends FHA multifamily processing regulations to: increase processing/commitment fees; recognize a feasibility processing stage for substantial rehabilitation projects and impose a fee for this processing; require the project sponsor to request a preapplication conference; and eliminate the conditional commitment processing stage for all but Section 242 hospital mortgages, and Section 223(f) acquisition/refinancing mortgages.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Director, New Products Division, Office of Multifamily Housing Development, Room 6138, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 708–2556. (This is not a toll-free telephone number.) Hearing- or speech-impaired may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in § 290.45 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 2502–0029. 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.

A. Rule Description

This rule amends various relevant parts of title 24 of the Code of Federal Regulations to effect the following changes in its processing procedures for FHA insurance of multifamily project mortgages. This final rule is based on a proposed rule published on July 1, 1993 at 58 FR 35724. The section numbering in this rule differs from the proposed rule. This final rule conforms to the consolidation of the FHA multifamily mortgage insurance program regulations set forth in another final rule published elsewhere in today's Federal Register.

1. Increase in Processing Fees

Multifamily mortgage insurance processing and commitment fees currently do not cover expenses incurred by the Department. A Price Waterhouse study estimates that during a 7-year period (FY 1985–FY 1991), fees collected (based on $3/$1,000 of the mortgage amount) covered only 68 percent to 92 percent of HUD's costs. (These costs were basically local HUD Office Housing costs—they did not include overhead costs or personnel outside of the local HUD office Multifamily Development Division.)

Implementation of the Delegated Processing program has resulted in an even greater shortfall. Under this program, HUD pays outside contractors to perform underwriting services. Fees charged by delegated processors are based on their cost of doing business, not on a percentage of the mortgage amount. The Price Waterhouse study, although based on a limited sample, indicated that fees collected by HUD covered only 61 percent of costs incurred. (Implementation of Technical Discipline Contracts (TDCs), should result in similar deficiencies in costs versus fees collected.)

Under this rule, HUD regulations are amended to more adequately cover HUD costs by increasing the aggregate fees to $5/$1,000 (from the current $3/$1,000) of the mortgage amount. This increase will be within the statutory limitation prescribed in Section 207(d) of the National Housing Act. Section 207(d) provides that appraisal and inspection charges ''shall not aggregate more than 1 per centum, of the original principal face amount of the mortgage.'' With the exception of Section 223(f) acquisition/refinancing mortgages, inspection fees are currently based on, and will remain at, not to exceed $5/$1,000 of the mortgage amount. Consequently, to remain within the statutory limitation of 1 percent, total processing/commitment fees cannot be increased by more than $2/$1,000 (for a total processing/commitment fee of $5/$1,000). This rule does not change the fees related to mortgage insurance processing and commitment for hospitals under Section 242.

2. Feasibility Processing Stage with Fee

Feasibility processing for substantial rehabilitation projects is recognized by program handbooks as an optional processing stage but it is not recognized by regulation. For this reason, HUD is not able to charge a processing fee, even though feasibility processing requires substantially more effort than Site Appraisal and Market Analysis (SAMA) processing for new construction projects, which are covered by regulation and for which a fee is chargeable.

The inability to charge a fee has significantly contributed to the processing deficit cited above, particularly when a case drops out after the feasibility analysis is completed. In such cases, HUD also loses the opportunity to collect a fee for future processing. Furthermore, under Delegated Processing and Technical Discipline Contracts (TDCs), outside contractors must be paid, regardless of whether HUD collects a fee. Collecting a fee to help offset the costs of paying the contractors is simply a sound business practice.

Consequently, this rule describes feasibility processing for multifamily substantial rehabilitation projects and reflects long-held HUD policy and practice that issuance of a feasibility letter is not binding upon the Department. It is a generally known fact that, in cases involving substantial rehabilitation, unanticipated major structural problems may be found at a later stage and may result in a dramatic increase in the total cost of rehabilitation. Also, substantial rehabilitation can involve complex readaptation of buildings, originally constructed for a non-residential purpose, that may require major architectural changes in the scope of the work, and consequently, in the Department's conclusions relative to the feasibility of the proposed project. In addition, substantive rehabilitation may come as a result of having to make the multifamily housing projects accessible to persons with disabilities. This rule reflects current HUD policy in stating that determinations found in a feasibility letter are not to be binding upon the Department and may be changed in whole or in part at a later time. The feasibility letter may even be unilaterally terminated by the Commissioner if found necessary.

3. Preapplication Conference

One of the goals of the Office of Housing is to speed up mortgage insurance processing. Submission of complete, well-documented applications by sponsors/mortgagees is essential to expeditious processing. Only if applications are complete, and time is not wasted by going back to the sponsor/mortgagee, can processing time

goals be met. Consequently, the rule permits the local HUD Office to determine if participation in a preapplication conference is required as a condition to submission of an initial application. This requirement will apply in all cases (except for part 242 insurance on hospital mortgages, and part 241(f) insurance on equity and acquisition loans) and will include any application by a project sponsor for an operating loss loan.

During the preapplication conference, sponsors will meet with the local HUD Office staff to present a project idea, discuss program FHEO requirements and be advised of any known market or environmental concerns. Contents of the application, including required exhibits, will be identified and discussed. In addition, if the proposal is obviously ineligible for mortgage insurance, the sponsor will be so advised. If a proposal appears eligible, the local HUD Office will determine when an application can be expected so that it can consider, based on work load and other priorities, whether it might be a candidate for in-house processing, delegated processing or TDC contracting.

4. Elimination of Conditional Commitment Stage

To speed the processing cycle, the rule eliminates the conditional commitment processing stage for all applications for loans for acquisition or refinancing of existing construction pursuant to Section 223(f). Sponsors have the option of submitting an application for SAMA (or feasibility) or firm commitment processing.

As is now the case, the SAMA (or feasibility) letter is not a commitment to insure the mortgage, nor does it bind HUD to issue a firm commitment to insure. The purpose of a firm commitment also remains unchanged. It will be issued only after completion of technical processing and will evidence HUD's approval of the application.

After issuing a SAMA letter, HUD technical staff will provide liaison services to the sponsor's design architect in the development of preliminary drawings, and specifications which must be submitted within a time period set forth in the SAMA letter with a processing fee and in a form prescribed by HUD. HUD will review and comment on the drawings and specifications which will be provided to the sponsor for use in preparing the firm commitment application. The fee will be equal to $1.00 per $1,000 of the mortgage amount.

A preliminary work write-up and outline specifications will be required for a feasibility application. Final documents, including final cost estimates, will be submitted at the firm commitment application stage.

5. Application Fees

The rule imposes a fee for feasibility processing (which HUD has previously performed without charge) and modifies the overall existing fee structure which currently requires an aggregate of $3.00 per $1,000 for all processing stages. The modified fee structure imposes an aggregate fee of $5.00 per $1,000 of mortgage amount, to be distributed among all processing stages.

Substantial Rehabilitation

A fee of $3.00 per $1,000 is charged at the feasibility stage for substantial rehabilitation projects. The balance of $2.00 per $1,000 will be charged at the firm commitment stage.

New Construction

A fee of $1.00 per $1,000 is charged at the SAMA stage, $1.00 per $1,000 for the review of plans and specifications, and the balance of $3.00 per $1,000 will be charged at the firm commitment stage.

Section 223(f) Loans

Projects to be acquired or refinanced pursuant to Section 223(f) will be subject to a conditional commitment processing fee of $3.00 per $1,000 and a firm commitment fee of $2.00 per $1,000.

Loan to Cover Operating Losses

A combined application and commitment fee of $5 per $1,000 of the loan amount shall be submitted with the application for firm commitment.

6. Update of Nondiscrimination Provisions

This rule also updates the nondiscrimination requirements in § 241.640 to reflect current statutory and regulatory prohibitions against discrimination on the basis of age, disability or familial status.

7. Change In Section 223(f) Inspection Fees

This final rule contains a provision not contained in the proposed rule relating to section 223(f) inspection fees. This change is being implemented as a result of changing program experience under the section 223(f) refinance program.

The nature of projects currently being considered for Section 223(f) mortgage insurance is significantly different from those typically submitted when the fee schedule for 223(f) projects was promulgated for full and coinsurance on August 25, 1987. At that time a vast majority of the projects were near or at the regulation's upper repair limits. Currently, HUD is receiving many applications for refinance to reduce interest rates under the subject program, where project repairs are very nominal.

The August 25, 1987, regulation provides for a two-tier inspection fee schedule. One consideration against using a single-tier one percent inspection fee rate, as was recognized at the time this regulation was first issued, was that where repairs are minimal, the fee would not cover the actual cost of making the inspection. This concern is still valid. This rule does, however, replace the current rigid $30 per dwelling unit minimum fee with authority in the Commissioner to establish a minimum project inspection fee. This fee will be periodically reviewed and may be adjusted upward or downward as necessary. Initially, the fee will be administratively set at $500 since $500 is the apparent minimum rate that a contractor will charge HUD for a project inspection regardless of the total work that will have to be inspected.

This change will lower the inspection fees for all projects larger than 17 dwelling units for which the repair costs are $3,000 per dwelling unit or less. Furthermore, for the sake of uniformity this change is also being incorporated in 24 CFR 232.906(d) covering inspection fees on mortgage insurance for nursing homes and related facilities.

B. Proposed Rule and Public Response

The Department received a total of 9 comments in response to the July 1, 1993, proposed rule (58 FR 35724): eight from private mortgage companies or developers and one from a national trade organization, The National Association of Home Builders.

Seven comments expressed general approval of the rule but set forth specific objections/recommendations. Two commenters (private companies) expressed general opposition to the rule but raised very similar objections/recommendations as those generally approving of the rule.

The following specific objections/recommendations were raised in connection with the rule.

1. *Increase in Processing Fees.* Five commenters questioned the manner in which the rule raises processing fees across the board on a fixed basis without regard to the wide variations in types and size of FHA applications.

With respect to loan size a number of points were raised:

a. FHA is now priced to attract most strongly the business on which it loses money in processing—the ''little'' loans which it ''subsidizes'' by charging far less than the processing costs.

b. FHA is already now priced to be richly profitable on larger loans, which currently pay an above market price for processing to the extent they pay more than about $20,000.

c. A price change to 0.5% will inevitably drive away larger loan business that was profitable, making the problem worse.

d. A price change to 0.5% will leave FHA still dramatically underpriced and attractive to the ''little'' loans, on which FHA will continue to lose money in processing.

A second objection is that the cost of processing varies greatly not only because of loan size but also because of loan type. A 223(f) refinancing request is relatively easy to process because there is an existing property with demonstrated rents and occupancy. A 221(d) loan is inherently more difficult. The property does not yet exist. Plans must be reviewed. Cost must be reviewed. Far greater judgment must be brought to bear to evaluate what levels can be prudently anticipated for rents, expenses, and vacancies.

Clearly, the cost to FHA in processing a 223(f) loan is not the same as that for a 221(d) loan. It would, therefore, be reasonable to charge more for 221(d) work than for 223(f) work. Indeed, if the underlying goal was to have the cases on which FHA presently loses money in processing bear more of their own costs, it would be entirely reasonably to thus differentiate.

One basic recommendation to address this situation would be retention of the current 0.3% fee structure with the addition of both minimum fees (so the smaller loans cover more of their processing costs, as they would be obliged to do if using any alternative financing source) and maximum fees (so as to limit the structural disincentive that currently drives the larger and more profitable business away from FHA as a source).

This would provide a ''more level playing field'' across the entire spectrum of loan sizes.

A similar dollar differentiation would be made with respect to refinancing as opposed to new construction or substantial rehabilitation mortgages.

HUD Response: HUD insures mortgages made by private lending institutions to finance: the construction or rehabilitation of multifamily rental housing; the purchase or refinance of existing multifamily or nursing home projects; and the construction or rehabilitation of nursing homes, intermediate care facilities, assisted living facilities, and board and care homes. Mortgage insurance is a contingent Federal liability which is not included in computing the Federal deficit. However, it is part of the ongoing discussion about the deficit. The Federal Credit Reform Act of 1990 requires that the budgetary treatment of all direct loan and loan guarantee programs recognize, at the front end, the net cost to the Federal Government resulting from these transactions. The Department is required to estimate the amount that it might lose on all multifamily project mortgages it insures and must request ''credit subsidy'' as part of its budget each Fiscal Year (FY) to cover those losses. Beginning in FY 1992, each HUD budget has included a request for credit subsidy. Because of current budgetary constraints credit subsidy dollars are a scarce resource. Large and small projects use up the credit subsidy dollars at an equal rate. The Department believes this provides the level playing field referenced above.

A number of commenters indicated that the fees charged on large loans subsidize small loans. One commenter indicated that the current market price for processing a loan was about $20,000. Other comments indicate that the increased fee will drive away larger loans and HUD will continue to lose money in processing. On the surface it would appear that the Department's fee structure is excessive. However, no other financing source currently matches all the benefits available with HUD mortgage insurance. For example, the Section 221(d)(4) program provides mortgage insurance for the construction loan and permanent loan (for up to 40 years with a level annuity payment plan), a maximum mortgage based on 90 percent of the estimated replacement cost, and a nonrecourse loan. Further, HUD insurance is a credit enhancement that provides access to reduced financing costs and the secondary market.

2. Mandatory Preapplication Conferences

Five commenters took issue with these provisions in the rule. The consensus was that:

1. Preapplication conferences should never be *required* (and should be discouraged as a relatively counterproductive use of staff time) on all refinancing transactions. This would specifically include 223(a)(7) and 223(f) refinancings.

2. Preapplication conferences should be optional at the local HUD Office level on new construction and substantial rehabilitation proposals. Such conferences are not universally necessary and the proposed rule would unnecessarily restrict local HUD Office flexibility in this matter. The result of requiring conferences in all cases will be wasteful and unneeded delays in FHA processing.

HUD Response: As previously stated, one of the Office of Housing's goals is to speed up mortgage insurance processing. The submission of complete well-documented applications by sponsors/mortgagors is essential to expeditious processing. The Department cannot process loans expeditiously and meet its time goals if applications are incomplete, and time is wasted by going back to the sponsor/mortgagor. However, based on comments from Industry and the local HUD Offices, HUD realizes that a national solution like a mandatory preapplication conference does not take into account the experience level of the development team. Therefore, the Department has modified the proposed regulation to accommodate differing levels of sophistication and experience. The local HUD Office will decide, on a case-by-case basis, if a preapplication conference is necessary. The Department, however, strongly recommends a preapplication conference for all new mortgage insurance applications involving new sponsors/mortgagors.

3. Requiring Technical Liaison by HUD Staff

Two commenters said that the rule proposal requiring HUD technical staff to provide liaison services to Sponsor's design architect in development of drawings, specifications, and cost estimates is unrealistic. They noted that the local HUD Offices they have dealt with have generally lacked the staff, expertise and time to commit to this significant undertaking.

HUD Response: Local HUD Offices are being given the tools necessary to commit to this activity. Previously, the Department provided the local HUD Office with delegated processing and technical assistance contracts to level their workload. To enhance the skill level of the local HUD Office staff, HUD is currently streamlining the underwriting process, developing computer systems that will free local HUD Office staff from the rote aspects of their duties, and providing both formal and informal training. Therefore, the Department is confident that the local HUD Offices will be able to perform this task.

4. Efficient Processing by HUD Staff

Three commenters raised the issue of efficient processing by local HUD Office staff. The following is an example of a typical comment:

Although we do not disagree with the imposition of a fee at the SAMA or Feasibility stage, we believe that those applicants who are paying fees for both SAMA or Feasibility (as appropriate) and Firm Commitment applications should, in consideration of fees paid, obtain processing within the time frames as per the HUD regulations and handbooks. Currently, this is not happening; processing times are now indeterminate. Applicants have paid fees and are unable to obtain response from the HUD Offices as to when applications will be processed and returned to the Sponsor/applicants, which is unreasonable, notwithstanding of the amount of fees charged. Such delays in processing are causing tremendous carrying costs to Sponsors, Architects, Contractors, and HUD approved lenders.

HUD Response: The Department recognizes that processing delays are costly to the Industry and to HUD. For this reason the Department is undergoing the process of reinvention and reorganization. Short term measures to reduce the workload were made available to local HUD Offices in the form of Delegated Processing and Technical Assistance Contracts. The Department is currently looking at the underwriting process to determine which activities can prudently be modified or eliminated altogether. Ultimately, the Multifamily Production Branch in the local HUD Office will have a more efficient operation.

5. Site Appraisal and Market Analysis (SAMA)

Two commenters questioned the need for a review of preliminary plans, etc., after SAMA approval. One made the following recommendation.

The proposed rule creates a new mandatory processing step for all sponsors who utilize the SAMA processing stage. This new step would occur after SAMA approval and would require sponsors to submit preliminary drawings, specifications and cost estimates, with a processing fee, to HUD for review and comment. While this step would be very useful to certain sponsors who desire HUD input on these documents, it would delay processing for those projects with designs that had previously been approved by HUD and with costs that the sponsor felt would be acceptable to HUD at the firm commitment stage. Therefore, we suggest that this step be optional at the election of the sponsor.

HUD Response: The Department needs to interact with the development team of a proposed project at this critical stage. The local HUD Office's continuous liaison during the design development is critical for streamlining the underwriting process. However, based on Industry comments the Department has modified the process. The local HUD Office will not request the owner's cost estimates nor will it produce cost estimates during the interim period. Of course, if the development team is using a previously approved design then the local HUD Office input will be greatly reduced.

6. Replace SAMA With Feasibility Stage

One commenter made this recommendation:

I agree with your proposal to charge a fee at Feasibility comparable to the required at SAMA. I feel a better approach, however, would be to replace the SAMA stage with Feasibility for new construction as well. This system, which prevailed in the early 1970's, would give a more detailed first look which would, I believe, offer early euthanasia to infeasible projects and expedite processing of those that make it to the Firm stage.

HUD Response: The Department disagrees with this recommendation since it would slow down the processing of proposed new construction projects while at the same time increasing the sponsor's out-of-pocket cost. SAMA processing establishes the land value fully improved, the acceptability of the proposed project site, the proposed composition, number and size of the units, the market for the number of proposed units, and the acceptability of the proposed unit rents. To do feasibility processing, the sponsor would need to supply, as part of the application package, drawings and specifications. The sponsor would incur substantial cost without knowing if there was a market for the project. In turn, the Department would have to review the plans and specifications before determining a market exists for the proposed project.

7. Mortgagee Has Option To Go Directly to Final Processing Stage

One commenter recommended that the rule be revised to set forth more clearly this option of the mortgagee.

HUD Response: The Department's existing administrative policy permits combining different stages of processing. However, over the years there has been some confusion over this policy. To clarify existing Departmental policy, this rule modifies the regulations to state that at the option of the local HUD Office the SAMA/Feasibility processing may be combined with the firm commitment processing. However, HUD recommends this approach only in the case of an experienced development team.

8. Charge Application Fees for Section 202 Projects

One commenter asked why application fees are not also charged in connection with Section 202 projects for the elderly and disabled. The commenter claimed much more time and effort go into the underwriting of such projects.

HUD Response: The Section 202/811 Capital Advance Program does not involve mortgage insurance. This program provides funding to nonprofit organizations that house the elderly and persons with disabilities, two under-served segments of the general housing population. Since the funding comes directly from the Department, there is no reason to charge any processing fees. Further, the Department recognizes that the program is labor intensive and has established a working group to look at ways to streamline the program.

C. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The economic impact of this rule is not significant, and affects small and large entities equally.

Environment

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, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas on building sites and, therefore, 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 do not have federalism implications and, thus, are not subject to review under the order. No programmatic or policy changes result from its promulgation which would affect the existing relationship between the federal government and state and local government.

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 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

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR parts 200, 232, and 241 are amended as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. The text of § 200.40 is added to read as follows:

§ 200.40 HUD fees.

The following fees apply to mortgages to be insured under this part.

(a) *Application fee—SAMA letter (for new construction).* An application fee of $1 per thousand dollars of the requested mortgage shall accompany the application for a SAMA letter. An additional fee of $1 per thousand dollars of the requested mortgage amount shall be charged for the review of plans and specifications.

(b) *Application fee—feasibility letter (for substantial rehabilitation).* An application fee of $3 per thousand dollars of the requested mortgage amount shall accompany the application for a feasibility letter.

(c) *Application fee—conditional commitment.* For a mortgage being insured under section 223(f) of the Act (12 U.S.C. 1715n), an application-commitment fee of $3 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment. For a mortgage being insured under section 242 of the Act (12 U.S.C. 1715z–7), an application fee of $1.50 per thousand dollars of the amount loaned shall be paid to the Commissioner at the time the hospital proposal is submitted to the Secretary of Health and Human Services for approval.

(d) *Application fee—firm commitment: General.* (1) Except as provided in paragraph (d)(2) of this section, an application for firm commitment shall be accompanied by an application-commitment fee which, when added to any prior fees received in connection with applications for a SAMA letter or a feasibility letter will aggregate $5 per thousand dollars of the requested mortgage amount to be insured. The payment of an application-commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held or contracted pursuant to the Atomic Energy Community Act of 1955 (42 U.S.C. 2301 *et seq.*).

(2) *Application fee—firm commitment: Hospitals.* A firm-commitment fee which, when added to the application fee, shall aggregate $3 per thousand dollars of the amount of the loan set forth in the firm commitment shall be paid within 30 days after the date of the commitment. If the payment of a commitment fee is not received by the Commissioner within 30 days after the date of issuance of the commitment, the commitment shall expire on the 30th day.

(e) *Inspection fee.* (1) *In general.* The firm commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. If an inspection fee is required, it shall be paid as follows:

(i) If the case involves insurance of advances, at the time of initial endorsement; or

(ii) If the case involves insurance upon completion, before the date construction is begun.

(2) *Existing projects.* For a mortgage being insured under section 223(f) of the Act, if the application provides for the completion of repairs, replacements and/or improvements (repairs), the Commissioner will charge an inspection fee equal to one percent (1%) of the cost of the repairs. However, where the Commissioner determines the cost of repairs is minimal, the Commissioner may establish a minimum inspection fee that exceeds one percent of the cost of repairs and can periodically increase or decrease this minimum fee.

(f) *Fees on increases*—(1) *In general.* Paragraph (f)(1) of this section applies to all applications except applications involving hospitals.

(i) *Increase in firm commitment before endorsement.* An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(ii) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

(iii) *Loan to cover operating losses.* In connection with a loan to cover operating losses (see § 200.22), a

combined application and commitment fee of $5 per thousand dollars of the amount of the loan applied for shall be submitted with the application for a firm commitment. No inspection fee shall be required.

(2) *Hospitals.* Paragraph (f)(2) of this section applies to applications in connection with a mortgage to be insured under section 242 of the Act.

(i) *Increase in commitment prior to endorsement.* Upon an application, filed prior to initial endorsement (or prior to endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding commitment, an additional application fee of $1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. Any increase in the amount of a commitment shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3 per thousand dollars of the amount of the increase. The additional commitment fee shall be paid within 30 days after the date of the amended commitment. If the additional commitment fee is not paid within 30 days, the commitment for the increased amount will expire and the previous commitment will be reinstated. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5 per thousand dollars of the amount of increase in commitment. Where insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. Where insurance upon completion is involved, the additional inspection fee shall be paid prior to the date construction is begun or within 30 days after the date of the issuance of the amended commitment, if construction has begun.

(ii) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, an additional application fee of $1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. The approval of any increase in the amount of the mortgage shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3 per thousand dollars of the amount of the increase granted. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5 per thousand dollars of the amount of the increase granted. The additional commitment and inspection fees shall be paid within 30 days after the increase is granted.

(g) *Reopening of expired commitments.* An expired commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

(h) *Transfer fee.* Upon application for approval of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars shall be paid on the original face amount of the mortgage in all cases, except that a transfer fee shall not be paid where both parties to the transfer transaction are nonprofit organizations.

(i) *Refund of fees.* If the amount of the commitment issued or increase in mortgage granted is less than the amount applied for, the Commissioner shall refund the excess amount of the application and commitment fees submitted by the applicant. If an application is rejected before it is assigned for processing, or in such other instances as the Commissioner may determine, the entire application and commitment fee or any portion thereof may be returned to the applicant. Commitment, inspection and reopening fees may be refunded, in whole or in part, if it is determined by the Commissioner that there is a lack of need for the housing or that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a governmental body or public agency, or in such other instances as the Commissioner may determine. A transfer fee may be refunded only in such instances as the Commissioner may determine.

(j) *Fees not required.* The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

3. The text of § 200.45 is added to read as follows:

§ 200.45 Processing of applications.

(a) *Preapplication conference.* Except for mortgages insured under section 241(f) or 242 of the Act, the local HUD Office will determine whether participation in such a conference is required as a condition to submission of an initial application for either a site appraisal and market analysis (SAMA) letter (for new construction), a feasibility letter (for substantial rehabilitation), or for a firm commitment. The project sponsor may elect (after the preapplication conference if required) to submit an application for a SAMA or a feasibility letter (as appropriate), or for a firm commitment for insurance depending upon the completeness of the drawings, specifications and other required exhibits. An application for a SAMA or feasibility letter may be submitted by the project sponsor. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved mortgagee. Applications shall be submitted to the local HUD Office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks. At the option of the local HUD Office, the SAMA/Feasibility letter stage of processing can be combined with the firm commitment stage of processing.

(b) *Firm commitment requirement.* An application for a firm commitment must be made by an approved mortgagee for any project for which a mortgagor seeks mortgage insurance under the Act.

(c) *Staged applications.* Staged applications leading to an application for firm commitment shall be made as determined appropriate by the Commissioner, and in accordance with such terms and conditions established by the Commissioner. The intermediate stages to firm commitment may include a site appraisal and market analysis (SAMA) letter stage or a feasibility letter stage and a conditional commitment. The conditional commitment stage applies only to mortgages to be insured pursuant to section 223(f) of the Act.

(d) *Effect of SAMA letter, feasibility letter, and firm commitment*—(1) *SAMA letter.* (i) The issuance of a SAMA letter indicates completion of the site appraisal and market analysis stage to determine initial acceptability of the site and recognition of a specific market need. The SAMA letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. The SAMA letter precedes the later submission of acceptable plans and specifications for the proposed project and is limited to advising the applicant as to the following determinations of the Commissioner, which shall not be

changed to the detriment of an applicant, if the application for a firm commitment is received before expiration of the SAMA letter:

(A) The land value fully improved (with off-site improvements installed);

(B) The acceptability of the proposed project site, the proposed composition, number and size of the units and the market for the number of proposed units. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number, size, or composition of the units, the SAMA letter may establish the specific lesser number of units which would be acceptable and any acceptable alternative plan for the composition and size of units; and

(C) The acceptability of the unit rents proposed. Where rent levels are unacceptable, the SAMA letter may establish specific rents which are acceptable.

(ii) After receiving a SAMA letter, the sponsor shall submit design drawings and specifications in a timeframe prescribed by the Commissioner. The Commissioner will review and comment on design development and the drawings and specifications. The comments will be provided to the sponsor for use in preparing a firm commitment application.

(2) *Feasibility letter.* The issuance of a feasibility letter indicates approval of the preliminary work write-up and outline specifications and completion of technical processing involving the estimated rehabilitation cost of the project, the ''as is'' value of the site, the detailed estimates of operating expenses and taxes, the specific unit rents, the vacancy allowance, and the estimated mortgage amount. The issuance of a feasibility letter is not a commitment to insure a mortgage for the proposed project and does not bind the Commissioner to issue a firm commitment to insure. Determinations found in a feasibility letter are not to be binding upon the Department and may be changed in whole or in part at any later point in time. The letter may even be unilaterally terminated by the Commissioner if found necessary.

(3) *Conditional commitment.* The issuance of a Section 223(f) conditional commitment indicates completion of technical processing involving the estimated value of the property, the detailed estimates of rents, operating expenses and taxes and an estimated mortgage amount.

(e) *Term of SAMA letter, feasibility letter, and conditional commitment.* A SAMA letter, a feasibility letter, and a conditional commitment shall be effective for whatever term is specified in the respective letter or commitment.

(f) *Rejection of an application.* A significant deviation in an application from the Commissioner's terms or conditions in an earlier stage application commitment or agreement shall be grounds for rejection. The fees paid to such date shall be considered as having been earned notwithstanding such rejection. (Approved by the Office of Management and Budget under control number 2502–0029.)

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, BOARD AND CARE HOMES, AND ASSISTED LIVING FACILITIES.

4. The authority citation 24 CFR part 232 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715w; 42 U.S.C. 3535(d).

5. Section 232.906 is revised to read as follows:

§ 232.906 Processing of applications and required fees.

(a) *Processing of applications.* The local HUD Office will determine whether participation in a preapplication conference is required as a condition to submission of an initial application for either a conditional or firm commitment. After the preapplication conference an application for a conditional or firm commitment for insurance of a mortgage on a project shall be submitted by the sponsor and an approved mortgagee. Such application shall be submitted to the local HUD Office on a HUD approved form. An application may, at the option of the applicant, be submitted for a firm commitment omitting the conditional commitment stage. No application shall be considered unless accompanied by all exhibits required by the form and program handbooks. An application may be made for a commitment which provides for the insurance of the mortgage upon completion of any improvements or for a commitment which provides, in accordance with standards established by the Commissioner, for the completing of specified repairs and improvements after endorsement.

(b) *Application fee—conditional commitment.* An application-commitment fee of $3 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment.

(c) *Application fee—firm commitment.* An application for firm commitment shall be accompanied by an application-commitment fee of $5 per thousand dollars of the requested mortgage amount to be insured less any amount previously received for a conditional commitment.

(d) *Inspection fee.* Where an application provides for the completion of repairs, replacements and/or improvements (repairs), the Commissioner will charge an inspection fee equal to one percent (1%) of the cost of the repairs. However, where the Commissioner determines the cost of repairs is minimal, the Commissioner may establish a minimum inspection fee that exceeds one percent of the cost of repairs and can periodically increase or decrease this minimum fee.

(e) *Cross-reference.* The provisions of paragraphs (f)(1) (Fee on increases), (g) (Reopening of expired commitments), (h) (Transfer fee), (i) (Refund of fees), and (j) (Fees not required) of § 200.40 of this chapter apply to applications submitted under subpart E of this part.

PART 241— SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

6. The authority citation for part 241 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-6; 42 U.S.C. 3535(d).

7. Section 241.505 is revised to read as follows.

§ 241.505 Processing of applications and required fees.

(a) *Preapplication conference.* The local HUD Office will determine whether participation in a preapplication conference is required as a condition to submission of an initial application for a firm commitment for insurance of an energy savings improvement loan on a project. An application for a firm commitment for insurance must be submitted by both the project sponsor and an approved lender. Applications shall be submitted to the local HUD Office on HUD-approved forms. No application will be considered unless accompanied by all exhibits required by the form and program handbooks.

(b) *Application for firm commitment.* An application for a firm commitment shall be accompanied by the payment of an application fee of $5 per thousand dollars of the requested loan amount to be insured.

(c) *Cross-reference.* The provisions of paragraphs (e) (Inspection fee), (f)(1) (Fee on increases), (g) (Reopening of expired commitments), (i) (Refund of fees), and (j) (Fees not required) of § 200.40 of this chapter apply to

applications submitted under subpart E of this part.

8. Section 241.510 is revised to read as follows:

§ 241.510 Commitments

(a) *Firm Commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the loan will be insured.

(b) *Types of firm commitment.* (1) Where the amount of the loan is $250,000 or more, the firm commitment may provide for the insurance of advances of loan money made during construction or may provide for the insurance of the loan after completion of the improvements.

(2) Where the amount of the loan is less than $250,000, the firm commitment shall provide for insurance of the loan after completion of the improvements.

(c) *Term of commitment.* (1) A firm commitment to insure advances shall be effective for a period of not more than 60 days from the day of issuance.

(2) A firm commitment to insure upon completion shall be effective for a designated term within which the borrower is required to begin construction, and if construction is begun as required, the commitment shall be effective for such additional period, estimated by the Commissioner, as will allow for completion of construction.

(3) The term of a firm commitment may be extended in such a manner as the Commissioner may prescribe.

9. Section 241.640 is revised to read as follows:

§ 241.640 Employment discrimination prohibited.

Any contract or subcontract executed for the performance of constructing the improvements to the project shall provide that there shall be no discrimination against any employee or applicant for employment because of race, color, religion, sex, familial status, disability, age, or national origin.

10. Section 241.1015 is revised to read as follows:

§ 241.1015 Processing of applications and required fees.

(a) *Application.* An application for the issuance of a firm commitment for insurance of an equity or acquisition loan on a project shall be submitted by an approved lender and by the owner or purchaser of the project to the Commissioner on a form prescribed by the Commissioner. No application shall be considered unless the exhibits called for by such forms are furnished.

(b) *Commitment Fees.* An application for a firm commitment shall be accompanied by the payment of an application-commitment fee of $5.00 per thousand dollars of the requested loan amount to be insured.

11. Section 241.1020 is revised to read as follows:

§ 241.1020 Commitments.

(a) *Firm Commitment.* The issuance of a firm commitment indicates the Commissioner's approval of the application for insurance and sets forth the terms and conditions upon which the equity or acquisition loan will be insured. The firm commitment may provide for the insurance of advances of the equity or acquisition loan immediately upon endorsement of the note.

(b) *Term of Commitment.* (1) A firm commitment is effective for whatever term is specified in the text of the commitment.

(2) The term of a firm commitment may be extended in such manner as the Commissioner may prescribe.

(c) *Reopening of expired commitments.* An expired firm commitment may be reopened if a request for reopening is received by the Commissioner within 90 days of the expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by the required application and commitment fee, must be submitted.

Date: March 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Monday
April 1, 1996

Part VII

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Update on the Status of the Superfund Substance-Specific Applied Research Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Toxic Substances and Disease Registry

[ATSDR–106]

Update on the Status of the Superfund Substance-Specific Applied Research Program

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This Notice is an update on the status of ATSDR's continuing effort to implement the Substance-Specific Applied Research Program (SSARP). Authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) or CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604 (i)), this research program was initiated on October 17, 1991. At that time, a list of priority data needs for 38 priority hazardous substances was announced in the Federal Register (56 FR 52178). The list was subsequently revised based on public comments and published in final form on November 16, 1992 (57 FR 54150).

The 38 substances, each of which is found on ATSDR's List of Priority Hazardous Substances, are aldrin/dieldrin, arsenic, benzene, beryllium, cadmium, carbon tetrachloride, chloroethane, chloroform, chromium, cyanide, p,p'-DDT,DDE,DDD, di(2-ethylhexyl) phthalate, lead, mercury, methylene chloride, nickel, polychlorinated biphenyl compounds (PCBs), polycyclic aromatic hydrocarbons (PAHs—includes 15 substances), selenium, tetrachloroethylene, toluene, trichloroethylene, vinyl chloride, and zinc (56 FR 52166, October 17, 1991).

Priority data needs for 12 additional priority hazardous substances were recently identified and are also being announced in a Federal Register Notice. The 12 substances, each of which is included in ATSDR's List of Priority Hazardous Substances, are chlordane, 1,2-dibromo- 3-chloropropane, di-n-butyl phthalate, disulfoton, endrin (includes endrin aldehyde), endosulfan (alpha-, beta-, and endosulfan sulfate), heptachlor (includes heptachlor epoxide), hexachlorobutadiene, hexachlorocyclohexane (alpha-, beta-, delta- and gamma-), manganese, methoxychlor, and toxaphene.

This Notice also serves as a continuous call for voluntary research proposals. Private-sector organizations may volunteer to conduct research to address specific priority data needs by indicating their interest through submission of a research proposal to ATSDR (see **ADDRESSES** section of this Notice). A Tri-Agency Superfund Applied Research Committee (TASARC) comprised of scientists from ATSDR, the National Toxicology Program (NTP), and the Environmental Protection Agency (EPA) will review all proposed voluntary research efforts.

DATES: ATSDR considers the voluntary research effort to be important to the continuing development of the SSARP. Therefore, the agency strongly encourages private-sector organizations to volunteer at any time to conduct research to address identified data needs unless ATSDR announces that research has already been initiated for that specific data need.

ADDRESSES: Private-sector organizations interested in volunteering to conduct research may write to Dr. William Cibulas, Chief, Research Implementation Branch, Division of Toxicology, ATSDR, 1600 Clifton Road, N.E., Mailstop E–29, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Dr. William Cibulas, Chief, Research Implementation Branch, Division of Toxicology, ATSDR, 1600 Clifton Road, N.E., Mailstop E–29, Atlanta, Georgia 30333, telephone 404–639–6306.

SUPPLEMENTARY INFORMATION:

Background

CERCLA as amended by SARA (42 U.S.C. 9604(i)) requires that ATSDR (1) jointly with the EPA, develop and prioritize a list of hazardous substances found at National Priorities List (NPL) sites, (2) prepare toxicological profiles for these substances, and (3) assure the initiation of a research program to address identified data needs associated with the substances. Before starting such a program, ATSDR will consider recommendations of the Interagency Testing Committee on the type of research that should be done. This committee was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA).

On October 17, 1991, ATSDR announced the identification of the priority data needs for 38 priority hazardous substances (56 FR 52178), requested public comments, and invited private- sector organizations to volunteer to conduct research to address specific priority data needs. On November 16, 1992, the agency published a revised list of 117 priority data needs for these priority hazardous substances (57 FR 54150).

The major goals of the ATSDR SSARP are (1) to address the substance-specific information needs of the public and scientific community, and (2) to supply necessary information to improve the database to conduct comprehensive public health assessments of populations living near hazardous waste sites. This program will also provide data that can be generalized to other substances or areas of science, including risk assessment of chemicals, thus creating a scientific base for addressing a broader range of data needs.

In section 104(i)(5)(D), CERCLA states that it is the sense of Congress that the costs for conducting this research program be borne by the manufacturers and processors of the hazardous substances under TSCA and by registrants under the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA), or by cost recovery from responsible parties under CERCLA. To execute this statutory intent, ATSDR developed a plan whereby parts of the SSARP are being conducted via regulatory mechanisms (TSCA/FIFRA), private-sector voluntarism, and through the direct use of CERCLA funds.

The TASARC, comprised of scientists from ATSDR, NTP, and the EPA has been set up:

(1) To advise on the assignment of priorities on mechanisms for addressing data needs;

(2) To coordinate knowledge of research activities to avoid duplication of research in other programs and under other authorities;

(3) To advise on issues of science related to substance-specific data needs; and

(4) To maintain a scheduled forum that provides an overall review of the ATSDR SSARP.

The TASARC has met six times since the SSARP began. This Notice is an update on the status of ATSDR's efforts to implement the SSARP, focusing on ongoing activities relevant to test-rule development under TSCA/FIFRA, private-sector voluntarism, and the direct use of CERCLA funds.

Additional data needs are being addressed through an interagency agreement with NTP, by ATSDR's Great Lakes Human Health Effects Research Program, and other agency programs. To date, a total of 63 research needs associated with 38 ATSDR priority hazardous substances (including 15 polycyclic aromatic hydrocarbons) are being addressed via these mechanisms (Table 1).

ATSDR believes that these priority data needs will remain on the agency's list until ongoing studies to address them have been completed, peer-reviewed, and accepted by ATSDR. However, priority data needs could be deleted from the list (Table 1) if upon re-evaluation of the existing database, the agency determines that additional studies are no longer needed. Three recent examples follow. ATSDR, in consultation with the TASARC, re-evaluated the database for acute inhalation toxicity for vinyl chloride and determined no additional data are needed at this time (Table 1). With regard to the priority data need for oral developmental toxicity studies for tetrachloroethylene (PERC), ATSDR recently re-evaluated the database during the update of the toxicological profile for this substance. ATSDR concluded that the database was sufficient to derive a minimal risk level (MRL) for acute oral exposure based on a developmental toxicity study. Although ATSDR believes that additional developmental data would be useful to more fully characterize the effects and increase the confidence level of the MRL, the agency now believes that this data is more appropriately classified as a *data need* rather than a *priority data need*. Therefore, this priority data need has also been deleted from the list (Table 1). Similarly, the *priority data need* for additional acute oral studies for trichloroethylene has been reclassified as a *data need* and thus deleted from the list (Table 1) because an MRL was derived during the updating of the toxicological profile. Conversely, additional priority data needs could be included in the ATSDR list based on assessment by agency programs (See Section F, ''Other ATSDR Programs,'' which discusses exposure subregistries).

A. TSCA/FIFRA

In developing and implementing the Substance-Specific Applied Research Program, ATSDR, NTP, and EPA have established procedures to identify priority data needs of mutual interest to Federal programs. These data needs are being addressed through a program of toxicologic testing under TSCA. This research will be conducted according to established TSCA procedures and guidelines. Generally, this testing will address more than one Federal program's need. Following review and endorsement by the TASARC oversight committee during fiscal year (FY) 1993, of the 117 priority data needs for 38 substances, approximately 60 priority data needs were referred to the EPA under TSCA/FIFRA authorities.

During 1994, EPA added 11 ATSDR substances (and associated 26 priority data needs) to its master testing list, the first step in test-rule development under TSCA, Section 4 (59 FR 11434, March 10, 1994). On September 30, 1994, EPA published a Federal Register Notice soliciting testing proposals from industry to address the priority data needs identified for ATSDR's priority hazardous substances (59 FR 49934). Although no manufacturers or processors of these substances came forward with testing proposals, several industry groups responded by submitting proposals to address some of the data needs via ATSDR's voluntary research program described in detail in Section B, ''Private-Sector Voluntarism.'' The priority data needs currently being addressed by TSCA/FIFRA are listed in Table 2.

ATSDR shared its priority data needs for these substances with other Federal agencies and programs. On several occasions when ATSDR identified priority data needs for oral exposure, other agencies needed inhalation data. In response, ATSDR is considering proposals to conduct inhalation studies in conjunction with physiologically based pharmacokinetic (PBPK) studies in lieu of oral bioassays. ATSDR expects that inhalation data derived from these studies can be used with PBPK modeling to address its oral toxicity data needs.

Table 2 includes the priority data needs for three metals, i.e., beryllium, chromium and mercury. However, the specific forms of the metals to be tested are yet to be determined. The TASARC has established a workgroup to address this issue. The workgroup will also consider the needs of other Federal agencies and EPA programs. The EPA will solicit testing proposals for these three metals at a later date.

B. Private-Sector Voluntarism

As part of the SSARP, on February 7, 1992, ATSDR initially announced a set of proposed procedures for conducting voluntary research (56 FR 4758). Revisions based on public comments were published on November 16, 1992 (57 FR 54160). Private-sector organizations were encouraged to volunteer to conduct research to address these specific priority data needs.

ATSDR has been pursuing voluntary research interests with three private-sector organizations: the General Electric Company (GE), the Halogenated Solvents Industry Alliance (HSIA), and the Chemical Manufacturers Association (CMA). Preliminary discussions are being held with a fourth organization, the Shell Oil Company. Through the voluntary research efforts of these organizations, data needs for two classes of substances (PCB compounds and volatile organic compounds) are being addressed (Table 2). To date, two memoranda of understanding (MOU) have been signed by ATSDR and the interested parties. A third MOU is under development.

General Electric Company (GE)

On February 8, 1995, ATSDR entered into an MOU with GE. This was the first time a private-sector organization volunteered to conduct research to address ATSDR's data needs identified in its SSARP. The MOU with GE covers the following three studies on PCBs:

* Project 1, ''An assessment of the chronic toxicity and oncogenicity of Aroclor-1016, Aroclor-1242, Aroclor-1254, and Aroclor-1260 administered in diet to rats,'' was initiated on February 8, 1993.

* Project 2, ''Metabolite detection as a tool for the determination of naturally occurring aerobic PCB biodegradation,'' was initiated on January 2, 1995.

* Project 3, ''PCB congener analyses,'' was initiated on February 8, 1993.

While the above studies do not address ATSDR's *priority* data needs for PCBs, the three projects will address some of the agency's data needs for these substances. Specifically, although ATSDR has identified bioassays via the inhalation and dermal routes as data needs for PCBs, agency scientists believe information gained via GE's oral bioassay (Project 1) is pertinent to understanding the toxicity of PCBs. Furthermore, first-pass metabolism does not appear to play a key role for these substances. Therefore, toxicity information to be obtained from the GE oral bioassay is expected to be relevant to the inhalation and dermal routes.

ATSDR has identified PCB degradation in sediment as a data need. Additional environmental fate information is needed to estimate exposure to PCBs under various conditions of environmental release in order to plan and conduct follow-up exposure and health studies. Therefore, Project 2 will address ATSDR's data need for the environmental fate of PCBs.

Although ATSDR has not identified PCB congener analyses (Project 3) as a data need, agency scientists believe that the toxicokinetics data (using selected tissues from Project 1) may provide important knowledge about the correlation of health effects with relevant PCB congeners.

Halogenated Solvents Industry Alliance (HSIA)

On April 4, 1995, ATSDR entered into an MOU with HSIA covering studies to address three ATSDR priority toxicity data needs for methylene chloride. The studies consist of acute- and subchronic-duration, and developmental toxicity via oral exposure. The data will be obtained by using PBPK modeling. These studies were initiated on May 23, 1995.

HSIA has also proposed to conduct a 28-day immunopathology assessment for methylene chloride via oral exposure, a priority data need identified by ATSDR. The agency expects to receive a study protocol from HSIA for peer review in the near future.

Currently, HSIA and ATSDR continue to discuss voluntary research efforts for trichloroethylene (TCE) and tetrachloroethylene (PERC).

With regard to TCE, ATSDR has recently reclassified the *priority data need* for acute oral data to a *data need*, (see Background section of this Notice). The agency is continuing its discussion with HSIA to assess the possibility of conducting a study or utilizing benchmark dose modeling to address this data need. As for immunopathology data, HSIA proposed to first review the existing data for TCE. If the data are inadequate and the methylene chloride immunopathology study mentioned above has provided meaningful information, HSIA would then conduct a similar study for TCE.

Regarding the priority data needs for PERC, HSIA plans to obtain the oral neurotoxicity data called for by the agency by PBPK modeling. The database to be used for modeling will include the HSIA-sponsored inhalation neurotoxicity study recently approved by EPA. EPA and ATSDR scientists recently reviewed and accepted the HSIA-sponsored reproductive toxicity study of PERC via inhalation. HSIA proposed to address ATSDR's priority data need for oral reproductive data using PBPK modeling. As for ATSDR's priority data need for immunopathology data, HSIA would follow the same procedures as for TCE (described above).

Finally, with regard to ATSDR's data need for oral developmental toxicity studies for PERC (see Background section of this Notice), ATSDR is continuing its discussion with HSIA to obtain this data via PBPK modeling once the EPA-required inhalation developmental toxicity study has been completed.

Chemical Manufacturers Association (CMA)

During FY 1995, the CMA submitted a study protocol addressing two ATSDR priority data needs for vinyl chloride, specifically, inhalation reproductive and developmental toxicity studies in rats.

ATSDR accepted the study protocol as a candidate for voluntary research based on ATSDR peer reviews and CMA's satisfactory response to the peer reviewers' comments. ATSDR expects to finalize an MOU with CMA covering this study in the near future.

EPA no longer requires inhalation neurological data for vinyl chloride as originally stated in its solicitation Notice (59 FR 49934, September 30, 1994). Its decision is based on a recent reevaluation of the database.

C. CERCLA-Funded Research (Minority Health Professions Foundation Research Program)

During FY 1992, ATSDR announced a $4 million cooperative agreement program with the Minority Health Professions Foundation (MHPF) to support substance-specific investigations. This cooperative venture is supported by the direct use of CERCLA funds. About $4 million was allocated annually for FYs 1993 to 1995 to continue this research program that ends in September 1997.

Currently, 9 priority data needs for 21 priority hazardous substances (including 15 PAHs) in the SSARP are being addressed by the MHPF institutions through this program. Also, the MHPF research program will address 13 other substance-specific data needs identified in the ATSDR toxicological profiles concerning exposures and related health effects. To date, more than 20 abstracts have been presented at scientific meetings, 4 manuscripts have been published in peer-reviewed journals, and 7 manuscripts are in preparation. The institutions receiving awards and their respective research projects are listed in Table 2.

A not-for-profit 501(c)(3) organization, the MHPF comprises 11 minority health professions schools. Its primary mission is to research the health problems that disproportionately affect poor and minority citizens. The purposes of the ATSDR-MHPF cooperative agreement are (1) to initiate research to address ATSDR-identified data needs for priority hazardous substances, and (2) to enhance existing disciplinary capacities to conduct research in environmental health at MHPF member institutions.

The areas of research at MHPF institutions include those related to broad areas of toxicology and environmental health science. Some MHPF members are conducting health studies of minority groups exposed to ATSDR's priority hazardous substances.

D. National Toxicology Program (NTP)

ATSDR maintains an interagency agreement (IAG) with NTP to conduct toxicologic testing of substances identified at NPL sites. The studies determine levels of exposure that present a significant risk to humans of acute, subchronic, and chronic health effects. Often these studies include an assessment of the substance's ability to cause cancer, reproductive toxicity, and birth defects. The results of these studies are used by regulatory agencies such as the Food and Drug Administration and EPA, various environmental and industrial groups, and ATSDR to improve the ability to conduct public health assessments at NPL sites.

Under this agreement, one toxicity priority data need identified in the SSARP (immunotoxicology study of carbon tetrachloride) is being addressed.

An area of ongoing research by the NTP is to study the bioavailability of PCBs in soil, a priority data need for ATSDR. Therefore, NTP research may also potentially address this ATSDR priority data need.

During FY 1993, the existing IAG was modified to include toxicity studies of ATSDR's priority hazardous substances via application of structure-activity relationship (SAR) techniques and PBPK modeling. NTP indicated future plans for SAR modeling for reproductive and immunologic endpoints. ATSDR is continuing to work closely with NTP as the agency has identified many reproductive and immunologic data needs for the 38 priority hazardous substances. As discussed in Section A, ''TSCA/FIFRA,'' ATSDR will consider using PBPK modeling to address data needs when models are well developed and validated. Therefore, ATSDR will continue to work closely with NTP in its efforts to refine the models.

E. Great Lakes Human Health Effects Research Program

Some of the priority data needs identified in the SSARP have been independently identified as research needs through the ATSDR Great Lakes Human Health Effects Research Program, a separate research program. To date, 12 priority data needs for 19 priority hazardous substances (including 15 PAHs) identified in the SSARP are being addressed through this program. The institutions receiving

awards and their respective studies are listed in Table 2.

The Great Lakes Critical Programs Act of 1990 mandated that EPA, in consultation with ATSDR, prepare a report that assesses the adverse effects of pollutants in the Great Lakes system on the health of individuals in the Great Lakes states. This report was recently transmitted to the Congress by the EPA Administrator.

In support of this directive, ATSDR received funds to carry out research. The ATSDR-supported research projects focus on at-risk populations to further define the human health consequences of exposure to persistently toxic substances in the Great Lakes basin. The research activities include but are not limited to the following:

(1) Characterizing exposure and determining the profiles and levels of Great Lakes contaminants in biologic tissues and fluids in at-risk populations;

(2) Identifying sensitive and specific human reproductive/developmental endpoints and correlating them to exposure to Great Lakes contaminants;

(3) Determining the short- and long-term risk(s) of adverse health effects in progeny whose parents were exposed to Great Lakes contaminants;

(4) Investigating the feasibility of establishing registries and surveillance cohorts in the Great Lakes region; and

(5) Establishing a chemical mixtures database with emphasis on tissue and blood levels in order to identify new cohorts, conduct surveillance and health effects studies, and establish registries and surveillance cohorts.

During FY 1992, ATSDR announced a $2 million grant program to conduct research on the impact on people's health from eating contaminated fish from the Great Lakes region. On September 30, 1992, ATSDR announced 9 awards under this program.

In FY 1993, about $3 million was allocated to support the continuation of the research projects conducted at the 9 institutions originally funded during FY 1992. In addition, ATSDR awarded one new grant to the Michigan Department of Public Health to design, establish, and operate a professionally creditable, interlaboratory quality assurance/quality control program for the ATSDR Great Lakes Human Health Effects Research Program. Additional funding of $3 million and $4 million for FYs 1994 and 1995, respectively, was allocated to continue support of the 10 research projects.

During FY 1994, ATSDR held a Great Lakes Research Symposium in Detroit, Michigan. The proceedings of the symposium will be published in the Journal of Toxicology and Industrial Health in the near future.

Other ATSDR Programs

In its role as a public health agency addressing environmental health, when appropriate, ATSDR may collect human data to validate substance-specific exposure and toxicity findings. Information on levels of contaminants in humans has been identified and remains as a priority data need for 37 of the 38 priority substances (Table 1). ATSDR will obtain this information through exposure and health effects studies, and through establishing and using substance-specific subregistries of people within the agency's National Exposure Registry who have potentially been exposed to these substances.

The list of 38 priority hazardous substances in the SSARP was forwarded to ATSDR's Exposure and Disease Registry Branch (EDRB), Division of Health Studies, for consideration as potential candidates for subregistries of exposed persons, based on criteria described in its 1988 document, ''Policies and Procedures for Establishing a National Registry of Persons Exposed to Hazardous Substances.''

To date, ATSDR has selected benzene, chromium, and trichloroethylene as primary contaminants to establish subregistries in the National Exposure Registry. However, aldrin/dieldrin, carbon tetrachloride, chloroethane, chloroform, cyanide, p,p'- DDT, DDE, DDD, di(2-ethylhexyl)phthalate, mercury, methylene chloride, PAHs, selenium, tetrachloroethylene, and vinyl chloride remain in the candidate pool. They will be considered for selection as primary contaminants during each selection process (Table 1).

Since the publication of the ATSDR March 10, 1994, Federal Register Notice (59 FR 11434), EDRB has re-evaluated the databases and included nickel, PCBs, toluene, and zinc in the candidate pool for consideration during each selection process (Table 1). However, arsenic, beryllium, cadmium, and lead are not considered to be in the pool of candidate substances for an exposure registry at this time. This decision will be re-evaluated as more information on the chemicals and exposure sites become available.

Finally, the need to collect, evaluate, and interpret environmental data from contaminated media around hazardous waste sites remains a priority data need for all 38 priority hazardous substances by ATSDR. However, agency scientists realize that a substantial amount of this information has already been collected through individual State programs and the EPA's CERCLA activities; therefore, ATSDR will evaluate the extant information from these programs to characterize better the need for additional site-specific information.

The results of the research conducted via the SSARP will be used for public health assessments and to reassess ATSDR's substance-specific priority data needs. The agency expects to re-evaluate the priority data needs for priority hazardous substances every three years.

Dated: March 26, 1996.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry .

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS (PDN) CURRENTLY BEING ADDRESSED UNDER ATSDR'S APPLIED RESEARCH PROGRAMS

Substance	PDN ID	PDN description	Programs (1)
Lead	1A	Mechanistic studies on the neurotoxic effects of lead	M
	1B	Analytical methods for tissue levels.	
	1C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	M, G
Arsenic	2A	Comparative toxicokinetic studies to determine if an appropriate animal species can be identified	
	2B	Half-lives in surface water, groundwater.	
	2C	Bioavailability from soil.	
	2D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers	
Mercury	3A	Multigeneration reproductive toxicity study via oral exposure	M, G
	3B	Dose-response data in animals for chronic-duration oral exposure	E

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS (PDN) CURRENTLY BEING ADDRESSED UNDER ATSDR'S APPLIED RESEARCH PROGRAMS—Continued

Substance	PDN ID	PDN description	Programs (1)
	3C	Immunotoxicology battery of tests via oral exposure	E
	3D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	G
	3E	Potential candidate for subregistry of exposed persons	A, G
Vinyl Chloride	4A	Dose-response data in animals for acute-duration inhalation exposure	O (2)
	4B	Multigeneration reproductive toxicity study via inhalation	V (7)
	4C	Dose-response data in animals for chronic-duration inhalation exposure.	
	4D	Mitigation of vinyl chloride-induced toxicity.	
	4E	2-species developmental toxicity study via inhalation	V (7)
	4F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers	
	4G	Potential candidate for subregistry of exposed persons	A
Benzene	5A	Dose-response data in animals for acute- and intermediate-duration oral exposure. The subchronic study should include an extended reproductive organ histopathology.	E
	5B	2-species developmental toxicity study via oral exposure	M
	5C	Neurotoxicology battery of tests via oral exposure	E
	5D	Epidemiologic studies on the health effects of benzene (Special emphasis endpoints include immunotoxicity).	
	5E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
Cadmium	6A	Analytical methods for biological tissues and fluids and environmental media.	
	6B	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
PCBs	7A	Dose-response data in animals for acute- and intermediate-duration oral exposures	G
	7B	Biodegradation of PCBs in water; bioavailability of PCBs in air, water and soil	
	7C	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology	
	7D	Epidemiologic studies on the health effects of PCBs (Special emphasis endpoints include immunotoxicity, gastrointestinal toxicity, liver, kidney, thyroid toxicity, reproductive/developmental toxicity).	G
	7E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	G
	7F	Potential candidate for subregistry of exposed persons	A (3)
	7G (8)	Chronic toxicity and oncogenicity via oral exposure	V
	7H (8)	Aerobic PCB biodegradation in sediment	V
	7I (8)	PCB congener analysis	V
Chloroform	8A	Dose-response data in animals for intermediate-duration oral exposure.	
	8B	Epidemiologic studies on the health effects of chloroform (Special emphasis endpoints include cancer, neurotoxicity, reproductive and developmental toxicity, hepatotoxicity, and renal toxicity)	
	8C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers	
	8D	Potential candidate for subregistry of exposed persons	A
PAHs	9A	Dose-response data in animals for intermediate duration oral exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology.	M
	9B	2-Species developmental toxicity study via inhalation or oral exposure	
	9C	Mechanistic studies on PAHs, on how mixtures of PAHs can influence the ultimate activation of PAHs, and on how PAHs affect rapidly proliferating tissues	
	9D	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology and immunopathology.	M
	9E	Epidemiologic studies on the health effects of PAHs (Special emphasis endpoints include cancer, dermal, hemolymphatic, and hepatic).	G
	9F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	G
	9G	Potential candidate for subregistry of exposed persons	A
Trichloro-ethylene.	10A	Dose-response data in animals for acute- duration oral exposure.	O (2)
	10B	Neurotoxicology battery of tests via the oral route	M
	10C	Immunotoxicology battery of tests via the oral route	V (4)
	10D	Epidemiologic studies on the health effects of trichloroethylene (Special emphasis endpoints include cancer, hepatotoxicity, renal toxicity, developmental toxicity, and neurotoxicity).	
	10E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
DDT	11A	Dose-response data in animals for chronic-duration oral exposure.	
	11B	Comparative toxicokinetic study (across routes/species).	
	11C	Bioavailability and bioaccumulation from soil.	
	11D	Epidemiologic studies on the health effects of DDT, DDD and DDE (Special emphasis endpoints include immunotoxicity, reproductive and developmental toxicity).	G
	11E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	G

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS (PDN) CURRENTLY BEING ADDRESSED UNDER ATSDR'S APPLIED RESEARCH PROGRAMS—Continued

Substance	PDN ID	PDN description	Programs [1]
	11F	Potential candidate for subregistry of exposed persons	A, G
Chromium	12A	Dose-response data in animals for acute-duration exposure to chromium (VI) and (III) via oral exposure and for intermediate-duration exposure to chromium (VI) via oral exposure.	E
	12B	Multigeneration reproductive toxicity study via oral exposure to chromium (III) and (VI)	E
	12C	Immunotoxicology battery of tests following oral exposure to chromium (III) and (VI)	E
	12D	2–Species developmental toxicity study via oral exposure to chromium (III) and (VI)	
	12E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
Tetrachloroethylene.	13A	Dose-response data in animals for acute-duration oral exposure, including neuropathology and demeanor, and immunopathology.	V[4, 5]
	13B	Multigeneration reproductive toxicity study via oral exposure	V[4, 5]
	13C	Dose-response data in animals for chronic-duration oral exposure, including neuropathology and demeanor, and immunopathology	
	13D	2–Species developmental toxicity study via oral exposure	O[2]
	13E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	13F	Potential candidate for subregistry of exposed persons	A
Aldrin/Dieldrin	14A	Dose-response data in animals for intermediate-duration oral exposure.	
	14B	Bioavailability from soil.	
	14C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	14D	Potential candidate for subregistry of exposed persons	A
Cyanide	15A	Dose-response data in animals for acute- and intermediate-duration exposures via inhalation. The subchronic study should include extended reproductive organ histopathology and evaluation of neurobehavioral and neuropathological endpoints.	E
	15B	2–Species developmental toxicity study via oral exposure	E
	15C	Evaluation of the environmental fate of cyanide in soil	E
	15D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	15E	Potential candidate for subregistry of exposed persons	A
Carbon Tetrachloride.	16A	Dose-response data in animals for chronic oral exposure. The study should include extended reproductive organ and nervous tissue (and demeanor) histopathology.	
	16B	Immunotoxicology battery of tests via oral exposure.	NTP
	16C	Half-life in soil.	
	16D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	16E	Potential candidate for subregistry of exposed persons	A
Beryllium	17A	Dose-response data in animals for acute- and intermediate-duration inhalation exposures. The subchronic study should include extended reproductive organ histopathology.	E
	17B	2–Species developmental toxicity study via inhalation exposure	E
	17C	Environmental fate in air; factors affecting bioavialability in air	E
	17D	Analytical methods to determine environmental speciation.	
	17E	Immunotoxicology battery of tests following oral exposure	E
	17F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
Toluene	18A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathologic evaluation of the immune system.	E
	18B	Comparative toxicokinetic studies (Characterization of absorption, distribution, and excretion via oral exposure).	E
	18C	Neurotoxicology battery of tests via oral exposure.	M
	18D	Mechanism of toluene-induced neurotoxicity.	
	18E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	18F	Potential candidate for subregistry of exposed persons	A[3]
Nickel	19A	Epidemiologic studies on the health effects of nickel (Special emphasis endpoints include reproductive toxicity).	
	19B	2–Species developmental toxicity study via the oral route.	
	19C	Dose-response data in animals for acute- and intermediate-duration oral exposures.	
	19D	Neurotoxicology battery of tests via oral exposure.	
	19E	Bioavailability of nickel from soil.	
	19F	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	19G	Potential candidate for subregistry of exposed persons	A[3]
Methylene Chloride.	20A	Dose-response data in animals for acute- and intermediate-duration oral exposure. The sub-chronic study should include extended reproductive organ histopathology, neuropathology and demeanor, and immunopathology.	V[5,6]
	20B	2–Species developmental toxicity study via the oral route	V[5]
	20C	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	20D	Potential candidate for subregistry of exposed persons	A

TABLE 1.—SUBSTANCE-SPECIFIC PRIORITY DATA NEEDS (PDN) CURRENTLY BEING ADDRESSED UNDER ATSDR'S APPLIED RESEARCH PROGRAMS—Continued

Substance	PDN ID	PDN description	Programs (1)
Zinc	21A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathologic evaluation of the immunologic and neurologic systems.	M
	21B	Multigeneration reproductive toxicity study via oral exposure.	
	21C	Carcinogenicity testing (2-year bioassay) via oral exposure.	
	21D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	21E	Potential candidate for subregistry of exposed persons.	A (3)
DEHP	22A	Epidemiologic studies on the health effects of DEHP (Special emphasis endpoints include cancer).	
	22B	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an extended histopathologic evaluation of the immunologic and neurologic systems.	
	22C	Multigeneration reproductive toxicity study via oral exposure.	
	22D	Comparative toxicokinetic studies (Studies designed to examine how primates metabolize and distribute DEHP as compared to rodents via oral exposure).	E
	22E	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	22F	Potential candidate for subregistry of exposed persons	A
Selenium	23A	Dose-response data in animals for acute-duration oral exposure.	
	23B	Immunotoxicology battery of tests via oral exposure.	
	23C	Epidemiologic studies on the health effects of selenium (Special emphasis endpoints include cancer, reproductive and developmental toxicity, hepatotoxicity and adverse skin effects).	
	23D	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers.	
	23E	Potential candidate for subregistry of exposed persons	A
Chloroethane	24A	Dose-response data in animals for acute- and intermediate-duration oral exposures. The subchronic study should include an evaluation of immune and nervous system tissues, and extended reproductive organ histopathology.	E
	24B	Dose-response data in animals for chronic inhalation exposures. The study should include an evaluation of nervous system tissues.	
	24C	Potential candidate for subregistry of exposed persons	A

[1] ATSDR programs for addressing data needs. A=ATSDR Division of Health Studies; E=Environmental Protection Agency-TSCA/FIFRA testing; G=Great Lakes Human Health Research Program; M=Minority Health Professions Foundation Schools; NTP=National Toxicology Program; V=Voluntary research; O=Other.
[2] No longer considered a priority data need based on recent evaluation of the database by ATSDR.
[3] These substances have been included in the pool of candidate substances for subregistry development since the publication of the FEDERAL REGISTER notice on March 10, 1994 (59 FR 11434).
[4] Potentially to be addressed by ATSDR's *Voluntary Research Program*.
[5] Data to be obtained by PBPK modeling.
[6] Initiation of immunopathology study pending submission and peer review of study protocol.
[7] Data to be obtained from a combined 2-generation reproduction and developmental toxicity study in rats.
[8] Not a priority data need.

TABLE 2.—GROUPS ADDRESSING ATSDR PRIORITY DATA NEEDS (PDN)

ATSDR Program	Firm, institution, agency, or Consortium	Substance	PDN ID
Voluntarism	Chemical Manufacturers Association	Vinyl Chloride	4B, 4E
	General Electric Company	PCBs	7G, 7H, 7I
	Halogenated Solvents Industry Alliance	Trichloroethylene	10C
		Tetrachloroethylene	13A, 13B
		Methylene chloride	20A, 20B
Minority Health Professions Foundation Schools.	Florida A & M University	Lead	1A
	The King/Drew Medical Center of the Charles R. Drew University of Medicine and Science.	Lead	1C
	Meharry Medical College	PAHs	9A, 9D
	Morehouse School of Medicine	Lead	1C
	Texas Southern University	Lead	1A
		Trichloroethylene	10B
		Toluene	18C
	Tuskegee University	Mercury	3A
		Zinc	21A
	Xavier University	Benzene	5B
		Zinc	21A
Great Lakes Human Health Research Program.	Michigan State University	Lead	1C
		Mercury	3D
		PCBs	7F

TABLE 2.—GROUPS ADDRESSING ATSDR PRIORITY DATA NEEDS (PDN)—Continued

ATSDR Program	Firm, institution, agency, or Consortium	Substance	PDN ID
		DDT	11D, 11E
	New York State Health Department	Lead	1C
		Mercury	3D
		PCBs	7F
	State University of New York at Buffalo	Lead	1C
		Mercury	3D
		PCBs	7E, 7F
		DDT	11D, 11E
	State University of New York at Oswego	Lead	1C
		Mercury	3A, 3D
		PCBs	7E, 7F
		DDT	11D, 11E
	University of Illinois at Chicago	Lead	1C
		Mercury	3A, 3D
		PCBs	7E, 7F
		DDT	11D, 11E
	University of Illinois at Urbana-Champaign	Lead	1C
		Mercury	3D
		PCBs	7E, 7F
	University of Wisconsin—Superior	Lead	1C
		Mercury	3D
		PCBs	7A, 7E, 7F
	Wisconsin Department of Health and Social Services	Lead	1C
		Mercury	3D, 3E
		PCBs	7F
		PAHs	9E, 9F
		DDT	11D, 11E, 11F
TSCA/FIFRA	Environmental Protection Agency	Mercury	3B
		Mercury	3C
		Benzene	5A
		Benzene	5C
		Chromium	12A
		Chromium	12B
		Chromium	12C
		Cyanide	15A
		Cyanide	15B
		Cyanide	15C
		Beryllium	17A
		Beryllium	17B
		Beryllium	17C
		Beryllium	17E
		Toluene	18A
		Toluene	18B
		DEHP	22D
		Chloroethane	24A
National Toxicology Program	National Institute of Environmental Health Sciences	Carbon Tetrachloride	16B

[FR Doc. 96–7852 Filed 3–29–96; 8:45 am]

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Federal Register

Monday
April 1, 1996

Part VIII

Department of Health and Human Services

Agency For Toxic Substances and Disease Registry

Identification of Priority Data Needs for 12 Priority Hazardous Substances; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–105]

Identification of Priority Data Needs for 12 Priority Hazardous Substances

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services (HHS).

ACTION: Request for Public Comments on the Identification of Priority Data Needs for 12 Priority Hazardous Substances, and an Ongoing Call for Voluntary Research Proposals.

SUMMARY: This Notice makes available for public comment the priority data needs for 12 priority hazardous substances as part of the continuing development and implementation of the ATSDR Substance-Specific Applied Research Program (SSARP). The Notice also serves as a continuous call for voluntary research proposals.
The SSARP is authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) or CERCLA, and amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)). This research program was initiated on October 17, 1991. At that time, a list of priority data needs for 38 priority hazardous substances was announced in the Federal Register (56 FR 52178). The list was subsequently revised based on public comments and published in final form on November 16, 1992 (57 FR 54150).

Twelve substances constitute the second list of hazardous substances for which priority data needs are identified by ATSDR. In developing this list, ATSDR solicited input from the Environmental Protection Agency (EPA) and the National Institute of Environmental Health Sciences (NIEHS). The priority data needs documents are available for review by writing to the ATSDR (see **ADDRESSES** section of this Notice).

The exposure and toxicity priority data needs in this Notice have been identified from information gaps via a ''Decision Guide'' that was published in the Federal Register on September 11, 1989 (54 FR 37618). The priority data needs represent essential information to improve the database to conduct public health assessments. Research to address these data needs will help determine the types or levels of exposure that may present significant risks of adverse health effects in people exposed to the subject substances.

The priority data needs identified in this Notice reflect the opinion of the agency, in consultation with other Federal programs, of the research needed pursuant to ATSDR's authority under CERCLA. They do not represent the priority data needs for any other program.

Consistent with section 104(i)(12) of CERCLA as amended (42 U.S.C. 9604(i)(12)), nothing in this research program shall be construed to delay or otherwise affect or impair the authority of the President, the Administrator of ATSDR, or the Administrator of EPA to exercise any authority regarding any other provision of law, including the Toxic Substances Control Act of 1976 (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA), or the response and abatement authorities of CERCLA.

In developing this research program, ATSDR has worked with other Federal programs to determine common substance-specific data needs, as well as mechanisms to implement research that may include authorities under TSCA and FIFRA, private-sector voluntarism, or the direct use of CERCLA funds.

When deciding the type of research that should be done, ATSDR considers the recommendations of the Interagency Testing Committee established under section 4(e) of TSCA. Federally funded projects that collect information from 10 or more respondents and are funded by cooperative agreement are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. If the proposed project involves research on human subjects, the applicants must comply with Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided that the project will be subject to initial and continuing review by the appropriate institutional review committees. Overall, data generated from this research program will lend support to others involved in human health assessments involving these 12 substances (and related ones) by providing additional scientific information for the risk assessment process.

The 12 substances, which are included in the ATSDR Priority List of Hazardous Substances established by ATSDR and EPA (59 FR 9486, February 28, 1994), are:

* chlordane
* 1,2-dibromo-3-chloropropane
* di-n-butyl phthalate
* disulfoton
* endrin (includes endrin aldehyde)
* endosulfan (alpha-, beta-, and endosulfan sulfate)
* heptachlor (includes heptachlor epoxide)
* hexachlorobutadiene
* hexachlorocyclohexane (alpha-, beta-, delta-, and gamma-)
* manganese
* methoxychlor
* toxaphene.

The priority data needs for these 12 substances are presented below. We invite comments from the public on individual data needs. After considering the comments, ATSDR will publish the final priority data needs for each substance. These priority data needs will be addressed by the mechanisms described in the ''Implementation of Substance-Specific Applied Research Program'' section of this Federal Register Notice.

This Notice also serves as a continuous call for voluntary research proposals. Private-sector organizations may volunteer to conduct research to address specific priority data needs in this Notice by indicating their interest through submission of a research proposal to ATSDR (see **ADDRESSES** section of this Notice). A Tri-Agency Superfund Applied Research Committee (TASARC) comprised of scientists from ATSDR, the National Toxicology Program (NTP), and EPA will review all proposals.

The substance-specific priority data needs were based on, and determined from, information in corresponding ATSDR toxicological profiles. Background technical information and justification for the priority data needs in this Notice are in the priority data needs documents. These documents are available for review by writing to ATSDR (see **ADDRESSES** section of this Notice).

DATES: Comments concerning this Notice must be received by July 1, 1996.

ADDRESSES: Include the docket control number ATSDR–42 with comments on this Notice. Submit comments to Dr. William Cibulas, Chief, Research Implementation Branch, Division of Toxicology, ATSDR, 1600 Clifton Road, N.E., Mailstop E–29, Atlanta, Georgia 30333. Use the same address for requests for priority data needs documents and submission of proposals to conduct voluntary research.

Comments on this Notice will be available for public inspection at ATSDR, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. to 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William Cibulas, Chief, Research Implementation Branch, Division of Toxicology, ATSDR, 1600 Clifton Road, N.E., Mailstop E–29, Atlanta, Georgia 30333, telephone 404–639–6306.

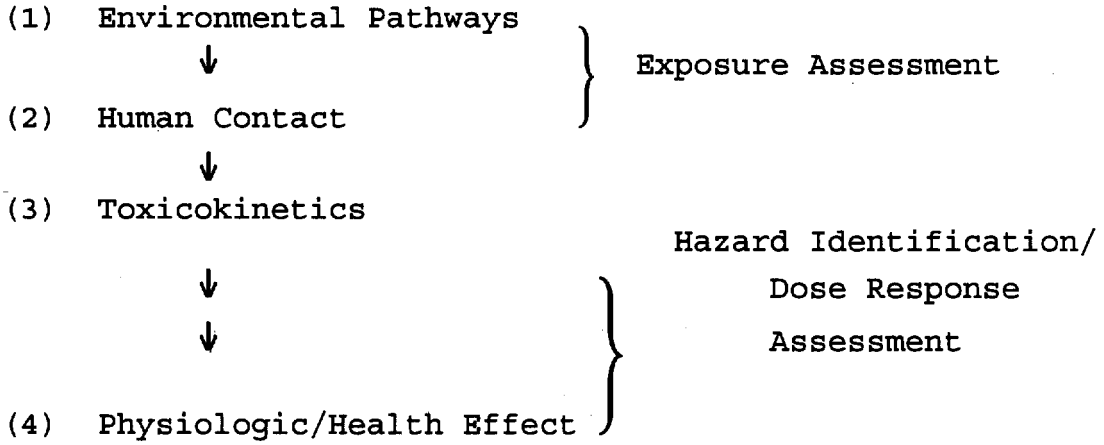
SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) or CERCLA (42 U.S.C. 9604 (i)), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604(i)), requires that ATSDR (1) develop jointly with EPA a list of hazardous substances found at National Priorities List (NPL) sites (in order of priority), (2) prepare toxicological profiles of these substances, and (3) assure the initiation of a research program to address identified priority data needs associated with the substances.

The Substance-Specific Applied Research Program was initiated on October 17, 1991. At that time, a list of priority data needs for 38 priority hazardous substances was announced in the Federal Register (56 FR 52178). The list was subsequently revised based on public comments and published in final form on November 16, 1992 (57 FR 54150).

This ATSDR SSARP supplies necessary information to improve the database to conduct public health assessments. This link between research and public health assessments, and the process for distilling priority data needs for ranked hazardous substances from information gaps found in associated ATSDR toxicological profiles, are described in the ATSDR ''Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles'' (54 FR 37618, September 11, 1989). Briefly, this guide identified categories of exposure and toxicity data needs necessary to assess the four basic steps to perform public health assessments.



The links between the release of a hazardous substance in the environment and the impact on human health can only be fully determined when the scientific underpinnings for these four basic steps are known. In the absence of these data, the public health assessment process must use certain assumptions. The relationships between these four steps and priority data needs are as follows:

Exposure Assessment

To meet its statutory mandates, ATSDR must make reasonable scientific assessments based on levels of contaminants found in the environment around CERCLA sites. To accomplish this goal, a major objective of this research program is to establish links between levels of contaminants in the environment and levels in human tissues or target organs that may cause an adverse health effect. This requires (1) the development and validation of sensitive analytical methods for measuring levels of contaminants in environmental media, (2) information on background levels in the general environment, (3) information on contaminant levels at or near hazardous waste sites, and (4) knowledge of the contaminants' environmental fate.

Relating environmental contaminant levels to human tissue concentrations requires (1) the development and validation of sensitive analytical methods for contaminant detection in human tissues, (2) bioavailability data, (3) information on background levels in nonexposed populations, and (4) information on levels in tissues for populations living at or near hazardous waste sites. Thus, a major priority data need for this applied research program will be to collect, evaluate, and interpret data from hazardous waste sites for both environmental media and human tissues, when appropriate.

Hazard Identification/Dose Response Assessment

Toxicologic and pharmacokinetic testing of priority hazardous substances is necessary to identify target organs and to establish tissue dosimetry. This information is critical to complete the association among levels of these substances in the environment, levels in human tissues, and levels associated with adverse health effects. Priority data needs generally arise when information is lacking that identifies the most sensitive target organs (and doses associated with these effects) following acute, intermediate, and chronic exposures to each substance. These data are needed to establish dose-response relationships, identify thresholds for these effects, and to determine levels of significant exposure to the hazardous substances that are associated with adverse health effects.

The identified health effect studies are conducted via the most relevant exposure route(s) representative of conditions at hazardous waste sites. ATSDR will consider using physiologically based pharmacokinetic (PBPK) modeling to address data needs when models are well developed and validated.

Once links have been established across exposure routes, levels in the environment, and in specific human tissues associated with health effects, it should be feasible to develop strategies to lessen these effects. Mechanistic studies can elucidate the pathophysiology of the health effects

and should ultimately lead to the development of clinical methods to mitigate any adverse health effects from exposure to people living around hazardous waste sites.

ATSDR scientists believe it is important to collect quality human data to validate the substance-specific exposure and toxicity findings from animal studies and equivocal human studies. This information will come from exposure and health effects studies and through the establishment of subregistries within the framework of ATSDR's National Exposure Registry.

Implementation of Substance-Specific Applied Research Program

In section 104(i)(5)(D), CERCLA states that it is the sense of Congress that the costs for conducting this research program be borne by the manufacturers and processors of the hazardous substances under TSCA and by registrants under the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 (FIFRA), or by cost recovery from responsible parties under CERCLA. To execute this statutory intent, ATSDR developed a plan whereby parts of the SSARP are being conducted via regulatory mechanisms (TSCA/FIFRA), private-sector voluntarism, and through the direct use of CERCLA funds.

CERCLA also requires that ATSDR consider recommendations of the Interagency Testing Committee (ITC) established under section 4(e) of TSCA on the types of research to be done. ATSDR actively participates on this committee; however, none of the proposed 12 substances are now on the ITC priority testing list.

The mechanisms for implementing the SSARP are discussed below. The status of the SSARP in addressing priority data needs of the first set of 38 priority hazardous substances via these mechanisms was described in a Federal Register Notice on March 10, 1994 (59 FR 11434). This will be updated in an upcoming Federal Register Notice.

A. TSCA/FIFRA

In developing and implementing the SSARP, ATSDR and EPA established procedures to identify priority data needs of mutual interest to Federal programs. Generally, this begins before or during the finalization of the priority data needs. These data needs will be addressed through a program of toxicologic testing under TSCA or FIFRA. This part of the research will be conducted according to established TSCA/FIFRA procedures and guidelines. Generally, this testing will fulfill more than one Federal program's need.

B. Private-Sector Voluntarism

As part of the SSARP, on February 7, 1992, ATSDR announced a set of proposed procedures for conducting voluntary research (56 FR 4758). Revisions based on public comments were published on November 16, 1992 (57 FR 54160). ATSDR strongly encourages private-sector organizations to propose research to address data needs at any time until ATSDR announces that research has already been initiated for a specific data need. Private-sector organizations may volunteer to conduct research to address specific priority data needs identified in this Notice by indicating their interest through submission of a research proposal.

The research proposal should be a brief statement (1–2 pages) that addresses the priority data need(s) to be filled, and the methods to be used. The TASARC will review these proposals. Based on the review committee's recommendations, ATSDR will determine which specific voluntary research projects will be pursued (and how) with the volunteer organizations. ATSDR will enter into only those voluntary research projects that lead to high quality, peer-reviewed scientific work. Additional details regarding the process for voluntary research are in the Federal Register Notices cited in this section.

C. CERCLA

Those priority data needs that are not addressed by TSCA/FIFRA or initial voluntarism will be considered for funding by ATSDR through its CERCLA budget. A large part of this research program is envisioned to be unique to CERCLA, for example, research on substances not regulated by other programs or research needs specific to public health assessments. Current examples of the direct use of CERCLA funds include interagency agreements with other Federal agencies and cooperative agreements and grants with academic institutions.

Mechanisms to address these priority data needs may include a second call for voluntarism. Again, scientific peer review of study protocols and results would occur for all research conducted under this auspice.

Substance-Specific Priority Data Needs

The priority data needs are identified in Table 1. Unique identification numbers (25A through 36H) are assigned to the priority data needs for this list of 12 priority hazardous substances; the initial list of 38 substances has identification numbers 1A through 24C (59 FR 11434, March 10, 1994).

As previously stated, ATSDR believes that part of this research will be most appropriately conducted using CERCLA data and resources. Toward this end, ATSDR has identified particular data needs that may be implemented by ATSDR programs. These priority data needs fall into both the exposure and toxicity data needs categories.

A major exposure priority data need for all 12 substances will be to collect, evaluate, and interpret data from contaminated media around hazardous waste sites. However, a substantial amount of this information has already been collected through individual State programs and the EPA's CERCLA activities. ATSDR scientists will, therefore, evaluate the extant information from these programs in order to better characterize the need for additional site-specific information.

ATSDR's role as a public health agency addressing environmental health is, when appropriate, to collect human data to validate substance-specific exposure and toxicity findings. ATSDR will obtain this information by conducting exposure and health effects studies, and by establishing and using substance-specific subregistries of people enrolled in the agency's National Exposure Registry who are potentially exposed to these substances. When a subregistry or a human exposure study is identified as a priority data need, the responsible ATSDR program will determine its feasibility which depends on identifying appropriate populations and funding. These priority data needs may be reclassified following considerations of feasibility. Any reclassification will be published in the Federal Register.

ATSDR acknowledges that the conduct of human studies to determine possible links between exposure to hazardous substances and human health effects may be accomplished other than by agency programs or under other ATSDR-sponsored projects. We encourage private-sector organizations and other governmental programs to use ATSDR's priority data needs to plan their research activities, including identifying appropriate populations and conducting studies to answer specific human health questions.

Dated: March 26, 1996.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

BILLING CODE 4163–70–P

Table 1
Substance-Specific Priority Data Needs (PDN) for 12 Priority Hazardous Substances

Substance		PDN ID	Priority Data Need
Hexachlorobutadiene	Exposure	25A	Evaluate existing data on concentrations of hexachlorobutadiene in contaminated environmental media at hazardous waste sites
		25B	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers
		25C	Environmental fate studies that determine the extent to which hexachlorobutadiene volatilizes from soil, and studies that determine the reactions and rates which drive degradation in soil
		25D	Bioavailability studies in soil and plants
		25E	Potential candidate for subregistry of exposed persons
	Toxicity	25F	Dose-response data in animals for acute-duration exposure via the oral route
Chlordane	Exposure	26A	Evaluate existing data on concentrations of chlordane in contaminated environmental media at hazardous waste sites
		26B	Exposure levels in humans living near hazardous waste sites and other populations potentially exposed to chlordane
		26C	Bioavailability studies following ingestion of contaminated media
		26D	Potential candidate for subregistry of exposed persons
	Toxicity	26E	Oral multigenerational studies to evaluate reproductive toxicity

Hexachlorocyclohexane α Hexachlorocyclohexane β Hexachlorocyclohexane δ Hexachlorocyclohexane γ	Exposure	27A	Evaluate existing data on concentrations of HCH in contaminated environmental media at hazardous waste sites
		27B	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers
		27C	Potential candidate for subregistry of exposed persons
	Toxicity	27D	Dose-response data for chronic-duration oral exposure
		27E	Mechanistic studies on the neurotoxicity, hepatotoxicity, reproductive toxicity and immunotoxicity of hexachlorocyclohexane
Heptachlor Heptachlor epoxide	Exposure	28A	Evaluate existing data on concentrations of heptachlor/heptachlor epoxide in contaminated environmental media at hazardous waste sites
		28B	Exposure levels in humans living near hazardous waste sites and other populations such as exposed workers
		28C	Bioavailability from contaminated air, water, and soil and bioaccumulation potential
		28D	Potential candidate for subregistry of exposed persons
	Toxicity	28E	Dose-response animal data for acute- and intermediate-duration oral exposures, including immunopathology
		28F	Multigeneration reproductive toxicity studies via the oral route of exposure
		28G	2-species developmental toxicity studies via the oral route of exposure

Di-n-butyl phthalate	Exposure	29A	Evaluate existing data on the concentration of di-n-butyl phthalate in contaminated environmental media at hazardous waste sites
		29B	Exposure levels in humans living near hazardous waste sites, and other populations such as exposed workers
		29C	Environmental fate of di-n-butyl phthalate in environmental media
		29D	Bioavailability in contaminated environmental media near hazardous waste sites
		29E	Potential candidate for subregistry of exposed persons
	Toxicity	29F	Dose-response data in animals for acute duration exposure via the oral route
		29G	Dose-response data in animals for chronic duration exposure via the oral route
		29H	Carcinogenicity studies via oral exposure
		29I	In vivo genotoxicity studies
		29J	Immunotoxicology studies via oral exposure
		29K	Neurotoxicity studies via oral exposure
Toxaphene	Exposure	30A	Exposure levels in humans living in areas near hazardous waste sites with toxaphene and in those individuals with the potential to ingest it
		30B	Evaluate existing data on concentrations of toxaphene in contaminated environmental media, particularly at hazardous waste sites
		30C	Potential candidate for subregistry of exposed persons
	Toxicity	30D	Identify the long-term health consequences of exposure to environmental toxaphene via oral exposure
		30E	Conduct additional chronic animal immunotoxicity studies via the oral route of exposure
		30F	Conduct additional chronic animal neurotoxicity studies via the oral route of exposure

Endosulfan Endosulfan α Endosulfan β Endosulfan sulfate		31A	Evaluate existing data on concentrations of endosulfan in the environment, particularly hazardous waste sites
		31B	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers
		31C	Data on the bioavailability of endosulfan from soil
		31D	Potential candidate for subregistry of exposed persons
	Toxicity	31E	Acute-duration oral exposure studies
		31F	Sensitive end point neurologic data on the effects of oral endosulfan exposure
Disulfoton		32A	Evaluate existing data on concentrations of disulfoton in contaminated environmental media at hazardous waste sites
		32B	Exposure levels of disulfoton in tissues/fluids for populations living near hazardous waste sites and other populations, such as exposed workers
		32C	Disulfoton should be considered as a potential candidate for a subregistry of exposed persons.
	Toxicity	32D	Immunotoxicology testing battery following oral exposure.

Endrin Endrin aldehyde	Exposure	33A	Evaluate existing data on concentration of endrin and its degradation products in contaminated environmental media at hazardous waste sites
		33B	Exposure levels for endrin and its degradation products in humans living near hazardous waste sites
		33C	Accurately describe the environmental fate of endrin, including environmental breakdown products and rates, media half-lives, and chemical and physical properties of the breakdown products that help predict mobility and volatility
		33D	Potential candidate for subregistry of exposed persons
	Toxicity	33E	Dose-response animal data for acute oral exposure to endrin
		33F	Multigeneration reproductive toxicity studies via oral exposure to endrin
		33G	Accurately describe the toxicokinetics of endrin and its degradation products and identify the animal species to be used as the most appropriate model for human exposure
Manganese	Exposure	34A	Evaluate existing data on concentrations of manganese in contaminated environmental media at hazardous waste sites
		34B	Exposure levels in humans living near hazardous waste sites and other populations, such as exposed workers
		34C	Potential candidate for subregistry of exposed persons
		34D	Relative bioavailability of different manganese compounds and bioavailability of manganese from soil
	Toxicity	34E	Dose-response data for acute- and intermediate-duration oral exposures (the subchronic study should include reproductive histopathology and an evaluation of immunologic parameters including manganese effects on plaque-forming cells (SRBC), surface markers (D4:D8 ratio), and delayed hypersensitivity reactions)
		34F	Toxicokinetic studies on animals to investigate uptake and absorption, relative uptake of differing manganese compounds, metabolism of manganese, and interaction of manganese with other substances following oral exposure
		34G	Epidemiological studies on the health effects of manganese (special emphasis end points include neurologic, reproductive, developmental, immunologic, and cancer)

Methoxychlor	Exposure	35A	Evaluate existing data on concentrations of methoxychlor in contaminated media, particularly at hazardous waste sites
		35B	Exposure levels of methoxychlor and primary metabolites in humans living near hazardous waste sites and in those individuals with the potential to ingest it
		35C	Evaluate the fate, transport, and levels of the degradation products of methoxychlor in soil
		35D	Potential candidate for subregistry of exposed persons.
	Toxicity	35E	Evaluate neurologic effects after long-term low-level oral exposure
1,2 dibromo-3-chloropropane	Exposure	36A	Evaluate existing data on concentrations of 1,2-dibromo-3-chloropropane in contaminated environmental media at hazardous waste sites
		36B	Exposure levels in humans living near hazardous waste sites and other exposed populations such as exposed workers
		36C	Potential candidate for subregistry of exposed persons
	Toxicity	36D	Dose-response data in animals for acute duration exposure via the oral route (including reproductive organ histopathology)
		36E	Dose-response data in animals for chronic-duration exposure via the oral route (including reproductive organ histopathology)
		36F	Two-species developmental toxicity study via oral exposure
		36G	Immunotoxicology testing battery via oral exposure
		36H	Neurotoxicology testing battery via oral exposure

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Federal Register

Monday
April 1, 1996

Part IX

Department of Justice

Bureau of Prisons

28 CFR Part 553

Inmate Personal Property; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 553

[BOP–1051–P]

RIN 1120–AA46

Inmate Personal Property

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on inmate personal property to allow for the standardization of authorized personal property lists at Bureau institutions and to facilitate procedures for the transportation of personal property due to inmate transfer or release. This amendment is intended to provide for the more efficient and secure operation of the institution.

DATES: Comments must be submitted by May 31, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on inmate personal property (28 CFR part 553, subpart B). A final rule on this subject was published in the Federal Register April 29, 1983 (48 FR 19573).

Current regulations governing inmate personal property specify that, consistent with the mission of the institution, each Warden shall identify in writing that personal property which may be retained by an inmate (see 28 CFR 553.10). Because of variations among institution lists, when inmates transfer between institutions not all property authorized at the sending institution may be considered authorized at the receiving institution. Any unauthorized property is mailed at government expense to another party of the inmate's choice.

In order to alleviate this problem, the Bureau is implementing a standardized list of property which would be authorized for retention at all institutions. The Warden retains the discretion to authorize additional items for retention at his or her institution. Typically, these additional items will be government-issued or perishable. The Bureau proposes that this standardized property list become fully implemented by November 1, 1997. Consequently, § 553.10 is being amended to refer to the standardized list and to additions authorized by the Warden. Under this new procedure, less personal property being transferred between institutions will be subject to rejection by the receiving institution. Property authorized for retention by the Warden in addition to the standardized list will be identified as such. Until full implementation of this procedure (i.e., November 1, 1997), the Bureau would continue to bear the cost of remailing to a non-Bureau address of the inmate's choice any property which would not be authorized by the receiving institution. After November 1, 1997, the inmate would be responsible for the cost of such remailing.

Both the standardized list and the additional items authorized by the Warden may include numerical limits on specific types of property (for example, two pair of athletic shoes). Such numerical limits reduces the reliance in the previous regulations on the amount of storage as a determining factor in the retention of personal property (former § 553.11(a)(1) had stated ''Staff may allow an inmate to retain that authorized property which the inmate may neatly and safely store in the designated area''). Revised § 553.11 now includes reference to possible numerical limitations along with the procedures for notifying inmates of such limits.

The provisions for storage space in new paragraph (b) contain a clear statement that authorized personal property is to be stored in the designated area. Specific provisions in the former regulations as to the requirement to store special purchase items, commissary items, correspondence, and reading materials have been removed to reduce redundancy. New paragraphs (c) through (h) now focus on limitations other than those imposed by space constraints. With respect to clothing, new paragraph (c) provides that civilian clothing (i.e., clothing not issued to the inmate by the Bureau or purchased by the inmate from the commissary) ordinarily is not authorized for retention by the inmate. This is in keeping with the standardized list of personal property. The regulations formerly allowed for some variation (former § 553.11(b), ''Staff may allow an inmate to retain that clothing, whether civilian (at institutions where authorized) or institution . . .''). Under new paragraph (c), such civilian clothing possessed by current inmates could be retained no later than November 1, 1997. New paragraphs (d) and (e) are unchanged and are being republished here for ease of review. New paragraph (f) is merely being redesignated from former paragraph (g) and is also being republished for ease of review.

Section 553.14 has been revised to address more completely procedures for the shipment or disposal of property due to inmate transfer and release. The revised procedures allow for more flexibility in shipping property. As mentioned above, until November 1, 1997, these procedures continue to provide for the remailing, at Bureau expense, of personal property not authorized for retention by the receiving institution. After that date, the inmate would be responsible for such costs. Because the standardized list would be fully implemented by that date, the Bureau expects that there would be substantially reduced need for such remailings.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 553

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 553 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

Subchapter C—Institutional Management

PART 553—INMATE PROPERTY

1. The authority citation for 28 CFR part 553 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed

in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 553.10 is amended by revising the last sentence to read as follows:

§ 553.10 Purpose and scope.

* * * Consistent with the mission of the institution, each Warden shall identify in writing that personal property which may be retained by an inmate in addition to that personal property which has been approved by the Director for retention at all institutions.

3. Section 553.11 is revised to read as follows:

§ 553.11 Limitations on inmate personal property.

(a) *Numerical limitations.* Authorized personal property may be subject to numerical limitations. The institution's Admission and Orientation program shall include notification to the inmate of any numerical limitations in effect at the institution and a current list of any numerical limitations shall be posted on inmate unit bulletin boards.

(b) *Storage space.* Staff shall set aside space within each housing area for use by an inmate. The designated area shall include a locker or other securable area in which the inmate is to store authorized personal property. The inmate shall be allowed to purchase an approved locking device for personal property storage in regular living units. Staff may not allow an inmate to accumulate materials to the point where the materials become a fire, sanitation, security, or housekeeping hazard.

(c) *Clothing.* Civilian clothing (i.e., clothing not issued to the inmate by the Bureau or purchased by the inmate from the commissary) ordinarily is not authorized for retention by the inmate. Civilian clothing which previously had been approved for retention may not be retained after November 1, 1997. Prerelease civilian clothing for an inmate may be retained by staff in the Receiving and Discharge area during the last 30 days of the inmate's confinement.

(d) *Legal materials.* Staff may allow an inmate to retain those legal materials which are necessary for an inmate's legal actions. Legal reference materials, such as books, may be retained if such materials are not available in the institution library. To ensure that materials do not become a fire, sanitation, security, or housekeeping hazard, each institution may establish a limit on the amount of, and storage location for, legal materials in the inmate's living area. Staff may authorize additional storage space, on a temporary, short-term basis, to an inmate who demonstrates a need for additional material in connection with that inmate's on-going litigation.

(e) *Hobbycraft materials.* Staff shall limit an inmate's hobby shop projects within the cell or living area to those projects which the inmate may store in designated personal property containers. Staff may make an exception for an item (for example, a painting) where size would prohibit placing the item in a locker. This exception is made with the understanding that the placement of the item is at the inmate's own risk. Staff shall require that hobby shop items be removed from the living area when completed, and be disposed of in accordance with the provisions of part 544, subpart D.

(f) *Radios and watches.* An inmate may possess only one approved radio and one approved watch at a time. The inmate must be able to demonstrate proof of ownership. An inmate who purchases a radio or watch through a Bureau of Prisons commissary is ordinarily permitted the use of that radio or watch at any Bureau institution if the inmate is later transferred. If the inmate is not allowed to use the radio or watch at the new institution, the inmate shall be permitted to mail, at the receiving institution's expense, the radio or watch to a destination of the inmate's choice. Where the inmate refuses to provide a mailing address, the radio and/or watch may be disposed of through approved methods, including destruction of the property.

(g) *Education program materials.* Education program materials or current correspondence courses may be retained even if not stored as provided in paragraph (b) of this section.

(h) *Personal photos.* An inmate may possess photographs, subject to the limitations of paragraph (b) of this section, so long as they are not detrimental to personal safety or security, or to the good order of the institution.

4. Section 553.14 is revised to read as follows:

§ 553.14 Inmate transfer between institutions and inmate release.

(a) Except as provided for in paragraphs (a) (1) through (3) of this section, authorized personal property shall be shipped by staff to the receiving institution.

(1) The Warden ordinarily shall allow an inmate transferring to another institution to transport personal items determined necessary or appropriate by staff and, if applicable, legal materials for active court cases.

(2) The Warden may require or allow an inmate who is transferring to another institution under furlough conditions to transport all the inmate's authorized personal property with him or her.

(3) An inmate who is being released or who is transferring to a Community Corrections Center may arrange to ship personal property at the inmate's expense. The inmate is responsible for transporting any personal property not so shipped.

(b) If the inmate's personal property is not authorized for retention by the receiving institution, staff at the receiving institution shall arrange for the inmate's excess personal property to be mailed to a non-Bureau destination of the inmate's choice. Until November 1, 1997, the receiving institution shall bear the expense for this mailing. After November 1, 1997, the inmate shall bear the expense for this mailing.

(c) Whenever the inmate refuses to provide a mailing address for return of the property or, when required, refuses to bear the expense of mailing the property, the property is to be disposed of through approved methods, including destruction of the property.

[FR Doc. 96–7815 Filed 3–29–96; 8:45 am]
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Part X

Department of the Treasury

Fiscal Service

31 CFR Part 321

Regulations Governing Payments by Banks and Other Financial Institutions of United States Savings Bonds and United States Savings Notes (Freedom Shares); Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 321

[Department of the Treasury Circular, Public Debt Series No. 750]

Regulations Governing Payments by Banks and Other Financial Institutions of United States Savings Bonds and United States Savings Notes (Freedom Shares)

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Proposed Rule.

SUMMARY: The Department of the Treasury hereby publishes, for comment, a proposed rule amending the regulations to update procedures used by the Bureau of the Public Debt for collecting debts owed by paying agents of United States Savings Bonds and Savings Notes (collectively referred to herein as savings bonds or bonds). These collection procedures are used when a paying agent cannot be relieved of liability for a savings bond transaction and the paying agent fails to reimburse Public Debt in a timely manner. Accounts designated or utilized by paying agents at Federal Reserve Banks for receiving settlements for savings bond redemptions are immediately credited upon the receipt of paid bonds with cash letters by Federal Reserve Banks or Branches through the EZ CLEAR system. These immediate settlements occur with the understanding that adjustments to correct errors may later be necessary.

This system has expedited the process of crediting the accounts paying agents have designated or utilized for receiving savings bond transaction settlements. However, the system has also made it more cumbersome for Public Debt to collect monies from paying agents, not relieved of liability, that fail to reimburse Public Debt in a timely manner. This amendment will correct this problem by providing that paying agents are deemed to have authorized the debit of any overdue amount, interest, administrative cost, and penalty assessed, directly from the agents' Reserve, correspondent, or clearing accounts designated or utilized at Federal Reserve Banks or Branches for settlement of redeemed savings bonds.

DATES: Comments must be received on or before May 1, 1996.

ADDRESSES: Comments should be sent to: Department of the Treasury, Bureau of the Public Debt, P. O. Box 1328, Parkersburg, West Virginia 26106–1328, Attention Debit Reg. Group, Room 507, Division of Staff Services. Comments received will be available for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Persons wishing to visit the library should call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Wallace L. Earnest, Division Director, Division of Staff Services, Bureau of the Public Debt, (304) 480–6319, or Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–5192.

SUPPLEMENTARY INFORMATION:

I. Background

The Proposed Rule will update the debt collection process used by the Bureau of the Public Debt. This update is necessitated by the automated processing of redeemed savings bonds through EZ CLEAR.

The collection procedures will apply when a paying agent cannot be relieved of liability under 31 U.S.C. 3126(a) for a loss resulting from a payment of a savings bond pursuant to 31 CFR Part 321. No change is being made in the procedure for assessing liability under 31 U.S.C. 3126(a), or in the regulations with respect to such liability determinations.

Relief of a paying agent from liability for a loss related to the redemption of a savings bond is a determination made under authority of 31 U.S.C. 3126(a).

When a depository financial institution qualifies as a savings bond paying agent, it agrees in writing to be bound by all of the provisions set out in 31 CFR Part 321 and the Appendix, as revised and amended, including any instructions promulgated by Treasury and its fiscal agents.

Paying agents receive settlements for the value of savings bonds redeemed via credits to Reserve, correspondent, and clearing accounts with Federal Reserve Banks, or their Branches.

II. Summary of Amendments

Section 321.21 will refer to collection procedures outlined in Paragraph 21 of the Appendix to this Part.

Paragraph 21 of the Appendix to this Part, will provide a detailed explanation of the consequences of a paying agent's failure to make reimbursement within 30 days of Public Debt's mailing the first demand letter, provided the paying agent cannot be relieved of liability under 31 U.S.C. 3126(a) for an erroneous payment.

A paying agent receiving settlement for the redemption value of redeemed savings bonds via credits to a Reserve, correspondent, or clearing account is deemed to have authorized the Federal Reserve Bank or Branch to debit the amount due from that account. Such debits shall be made if the paying agent fails to make timely reimbursement or submit new evidence sufficient for Public Debt to change a determination of liability within 120 days of the mailing of the first demand letter. The amount due from the redemption of a security for which the paying agent is not relieved of liability, under 31 U.S.C. 3126(a), shall include the amount of the final loss resulting from the erroneous payment, interest, administrative costs, and penalty charges.

A financial institution designated by a paying agent to receive settlement for redeemed savings bonds on behalf of that paying agent via a credit to a Reserve, correspondent, or clearing account with a Federal Reserve Bank or Branch is deemed to have authorized a debit from such account to collect an amount due from the paying agent. The consequences of a paying agent's failure to make timely reimbursement include the paying agent's being required to pay:

(a) Interest charges accruing from the date the first demand letter is mailed to the date of reimbursement, at the current value of funds rate published by the Secretary of the Treasury annually or quarterly in the Federal Register;

(b) Administrative costs (currently processing costs of $6.00) will be assessed, if reimbursement is not made within 30 days of the date the first demand letter is mailed;

(c) Penalty charges in accordance with 31 U.S.C. 3717(e), if reimbursement is not made within 120 days of the date the first demand letter is mailed. When assessed, the penalty charge will accrue and be calculated from 30 days after the date the first demand letter is mailed to the date of reimbursement.

Procedural Requirements

It has been determined that this Proposed Rule is not a ''significant regulatory action,'' pursuant to Executive Order 12866.

Although this rule is being issued in proposed form to secure the benefit of public comment, the rule relates to matters of public contract, as well as the borrowing power and fiscal authority of the United States. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions

of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information required by this Proposed Rule, therefore, the Paperwork Reduction Act does not apply.

Comments: Consideration will be given to any written comments that are submitted to the Bureau of the Public Debt. All comments will be available for public inspection and copying.

List of Subjects in 31 CFR Part 321

Banks, Banking, Bonds, Government securities.

Dated: March 26, 1996.

Gerald Murphy,

Fiscal Assistant Secretary.

For the reasons set forth in the preamble, Part 321 of Title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 321—PAYMENTS BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF UNITED STATES SAVINGS BONDS AND UNITED STATES SAVINGS NOTES (FREEDOM SHARES)

1. The authority citation for Part 321 is proposed to be revised as follows:

Authority: 2 U.S.C. 901, 5 U.S.C. 301, 12 U.S.C. 391, 31 U.S.C. 3105, 31 U.S.C. 3126.

2. Section 321.21 is proposed to be revised to read as follows:

§ 321.21 Replacement and recovery of losses.

(a) If a final loss results from the redemption of a security, and the paying agent redeeming the security is not relieved of liability for such loss under 31 U.S.C. 3126(a), the Bureau of the Public Debt will demand that the paying agent promptly reimburse the United States in the amount of the final loss and will take such other action as may be necessary to collect such amount as set out in the procedure described in Paragraph 21 of the Appendix to this Part.

(b) If a final loss has resulted from the redemption of a security, and no reimbursement has been or will be made, the loss shall be subject to replacement out of the fund established by the Government Losses in Shipment Act, as amended.

3. Subpart E, Paragraph 21 of the Appendix to this Part is proposed to be revised to read as follows:

Appendix to Department of the Treasury Circular No. 750, Fourth Addition

* * * * *

21. *Determination of liability.* [Sec. 321.18 and Sec. 321.21]

(a) Upon completing the investigation, the Bureau of the Public Debt will examine the available information and determine whether a paying agent may be relieved of liability for any loss resulting from a payment. If the paying agent cannot be relieved of liability, demand will be made upon the paying agent to reimburse the Treasury promptly. Any amount not paid within 30 days following the mailing of the first demand letter is subject to the following charges.

(1) Interest shall accrue from the date the first demand letter is mailed to the date reimbursement is made. The rate of interest to be used will be the current value of funds rate published annually or quarterly in the Federal Register and in effect during the entire period in which the remittance is late.

(2) Administrative costs shall be assessed as set out in the first demand letter, if reimbursement is not made within 30 days of the date the first demand letter is mailed.

(3) Penalty charges shall be assessed, in accordance with 31 U.S.C. 3717(e), if reimbursement is not made within 120 days of the date the first demand letter is mailed. The penalty charge will accrue and be calculated from 30 days after the date the first demand letter is mailed to the date of reimbursement.

(b) When a paying agent fails, within 120 days of the date the first demand letter is mailed, to make such reimbursement or to submit new evidence sufficient for Public Debt to change the determination of liability; by virtue of the paying agent's acceptance of settlement via credits to a Reserve, correspondent, or clearing account with a Federal Reserve Bank or Branch, the agent is deemed to have authorized the Federal Reserve Bank to debit the amount due from that account designated or utilized by the agent at the Federal Reserve Bank or Branch. An institution, designated by a paying agent to receive settlement on its behalf, in authorizing such paying agent to utilize its Reserve, correspondent, or clearing account on the books at the Federal Reserve Bank shall similarly be deemed to authorize such debits from that account.

(c) Reconsideration of a determination of liability will be made in any case when a paying agent so requests and presents additional evidence and information regarding the transaction.

[FR Doc. 96–7880 Filed 3–29–96; 8:45 am]

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Part XI

Department of Housing and Urban Development

24 CFR Parts 4 and 12

Office of the Secretary—Prohibition of Advance Disclosure of Funding; Accountability in the Provision of HUD Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 4 and 12

[Docket No. FR–3954–F–01]

RIN 2501–AC04

Prohibition of Advance Disclosure of Funding; Accountability in the Provision of HUD Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule streamlines 24 CFR parts 4, regarding prohibition of advance disclosure of funding decisions, and 12, regarding accountability in the provision of HUD assistance, in the context of HUD's regulatory reinvention process by combining them into a single, revised part 4 and removing unnecessary and repetitious language.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel, Ethics Law Division, at (202) 708–3815, or Sam E. Hutchinson, Associate General Counsel, Office of Human Resources Law, (202) 708–2947; 451 Seventh Street, SW., Washington, DC 20810. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–3259. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in §§ 4.7 and 4.9 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 2510–0011. 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—Regulatory Reinvention

Consistent with Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal Departments and Agencies on regulatory reinvention, HUD has reviewed all its regulations to determine whether certain regulations can be eliminated, streamlined, or consolidated with other regulations. In keeping with the President's mandate to reinvent and reform regulations, the Department is streamlining parts 4 and 12. These parts have been re-drafted to eliminate text that only repeats statutory language, or provisions that are advisory or non-exclusive, such as lists of examples.

One goal of reinventing regulations is to remove rule text that repeats statutory language. Besides resulting in considerable streamlining of regulations, such a practice will remove the problems that result when a rule that repeats the language of a statute becomes inconsistent with new statutory amendments. The final rule promulgated here does not, therefore, repeat any statutory language; it contains only those provisions that are necessary for clarification of the statutory procedures, or provisions that address those areas that give the Secretary discretion to act.

The remaining regulatory text is further pruned to eliminate provisions that are advisory or non-exclusive. For example, the term ''assistance'' in § 4.5, *Definitions,* of the current rule, includes a long list of programs that provide for the competitive distribution of assistance. Since such a list is subject to change, it is not likely to remain current and is therefore being removed from the rule.

The same procedures described above (the removal of: statutory language, lists subject to change, and text that is only advisory) are applied to part 12, leaving a streamlined rule that retains only the regulatory provisions that do not repeat the statutory requirements, which remain in effect.

Both parts 4 and 12 are substantially restructured by this rule. All of the subparts in the current versions of both parts are eliminated, and the remaining provisions of part 4 are designated as subpart B of the revised part 4. The remaining provisions of part 12 are redesignated as subpart A of part 4, and part 12 is removed. Each subpart cites the statutory provision being interpreted and under which it is authorized (subpart A of part 4 under section 102 of the Department of Housing and Urban Development Reform Act of 1989 [HUD Reform Act]; subpart B of part 4 under section 103 of the HUD Reform Act). However, the changes made by this rule are only structural and not substantive; the implementation of the HUD Reform Act remains consistent with its implementation before the changes made by this rule.

III. Findings and Certifications

Justification for Final Rulemaking

The Department has determined that this rule should be adopted without the delay occasioned by requiring prior notice and comment. This final rule only makes a number of streamlining changes to existing provisions, as discussed above in section II. of this preamble. As such, prior notice and comment are unnecessary under 24 CFR Part 10.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended.

Regulatory Flexibility Act

The Secretary, in accordance with provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities because the parts amended by this rule are streamlined but not substantively changed.

Executive Order 12612, Federalism

HUD has determined, in accordance with Executive Order 12612, *Federalism,* that this rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, since the rule merely streamlines the affected parts without substantively changing them.

Executive Order 12606, The Family

HUD has determined that this rule will not have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, *The Family,* because 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

24 CFR Part 4

Administrative practice and procedure; Government employees, Grant programs—housing and community development, Investigations, Loan programs—housing and community development, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 12

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community

development, Reporting and recordkeeping requirements.

Accordingly, under the authority of 42 U.S.C. 3535(d), for the reasons stated in the preamble, 24 CFR subtitle A is amended as follows:

1. Part 4 is revised to read as follows:

PART 4—HUD REFORM ACT

Subpart A—Accountability in the Provision of HUD Assistance

Sec.
4.1 Purpose.
4.3 Definitions.
4.5 Notice and documentation of assistance subject to Section 102(a).
4.7 Notice of funding decisions.
4.9 Disclosure requirements for assistance subject to Section 102(b).
4.11 Updating of disclosure.
4.13 Limitation of assistance subject to Section 102(d).

Subpart B—Prohibition of Advance Disclosure of Funding Decisions

4.20 Purpose.
4.22 Definitions.
4.24 Scope.
4.26 Permissible and impermissible disclosures.
4.28 Civil penalties.
4.30 Procedure upon discovery of a violation.
4.32 Investigation by Office of Inspector General.
4.34 Review of Inspector General's report by the Ethics Law Division.
4.36 Action by the Ethics Law Division.
4.38 Administrative remedies.

Authority: 42 U.S.C. 3535(d), 3537a, 3545.

Subpart A—Accountability in the Provision of HUD Assistance

§ 4.1 Purpose.

The provisions of this subpart A are authorized under section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (42 U.S.C. 3537a) (hereinafter, Section 102). Both the provisions of Section 102 and this subpart A apply for the purposes of Section 102. Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs.

§ 4.3 Definitions.

Applicant includes a person whose application for assistance must be submitted to HUD for any purpose including approval, environmental review, or rent determination.

Assistance under any program or discretionary fund administered by the Secretary is subject to Section 102(a), and means any assistance, under any program administered by the Department, that provides by statute, regulation or otherwise for the competitive distribution of funding.

Assistance within the jurisdiction of the Department is subject to Section 102(b), and means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department, whether or not it is awarded through a competitive process.

Assistance within the jurisdiction of the Department to any housing project is subject to Section 102(d), and means:

(1) Assistance which is provided directly by HUD to any person or entity, but not to subrecipients. It includes assistance for the acquisition, rehabilitation, operation conversion, modernization, renovation, or demolition of any property containing five or more dwelling units that is to be used primarily for residential purposes. It includes assistance to independent group residences, board and care facilities, group homes and transitional housing but does not include primarily nonresidential facilities such as intermediate care facilities, nursing homes and hospitals. It also includes any change requested by a recipient in the amount of assistance previously provided, except changes resulting from annual adjustments in Section 8 rents under Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f);

(2) Assistance to residential rental property receiving a tax credit under Federal, State or local law.

(3) For purposes of this definition, assistance includes assistance resulting from annual adjustments in Section 8 rents under Section 8(c)(2)(A) of the United States Housing Act of 1937, unless the initial assistance was made available before April 15, 1991, and no other assistance subject to this subpart A was made available on or after that date.

Housing project means:

(1) Property containing five or more dwelling units that is to be used for primarily residential purposes, including (but not limited to) living arrangements such as independent group residences, board and care facilities, group homes, and transitional housing, but excluding facilities that provide primarily non-residential services, such as intermediate care facilities, nursing homes, and hospitals.

(2) Residential rental property receiving a tax credit under Federal, State, or local law.

Interested party means any person involved in the application for assistance, or in the planning, development or implementation of the project or activity for which assistance is sought and any other person who has a pecuniary interest exceeding the lower of $50,000 or 10 percent in the project or activity for which assistance is sought.

Selection criteria includes, in addition to any objective measures of housing and other need, project merit, or efficient use of resources, the weight or relative importance of each published selection criterion as well as any other factors that may affect the selection of recipients.

§ 4.5 Notice and documentation of assistance subject to Section 102(a).

(a) *Notice.* Before the Department solicits an application for assistance subject to Section 102(a), it will publish a Notice in the Federal Register describing application procedures. Not less than 30 calendar days before the deadline by which applications must be submitted, the Department will publish selection criteria in the Federal Register.

(b) *Documentation of decisions.* HUD will make available for public inspection, for at least five (5) years, and beginning not less than 30 calendars days after it provides the assistance, all documentation and other information regarding the basis for the funding decision with respect to each application submitted to HUD for assistance. HUD will also make available any written indication of support that it received from any applicant. Recipients of HUD assistance must ensure, in accordance with HUD guidance, the public availability of similar information submitted by subrecipients of HUD assistance.

§ 4.7 Notice of funding decisions.

HUD will publish a Notice in the Federal Register at least quarterly to notify the public of all decisions made by the Department to provide:

(a) Assistance subject to Section 102(a); and

(b) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

§ 4.9 Disclosure requirements for assistance subject to Section 102(b).

(a) *Receipt and reasonable expectation of receipt.* (1) In determining the threshold of applicability of Section 102(b), an

applicant will be deemed to have received or to have a reasonable expectation of receiving:

(i) The total amount of assistance received during the Federal fiscal year during which the application was submitted;

(ii) The total amount of assistance requested for the fiscal year in which any pending application, including the current application, was submitted; and

(iii) For the fiscal year described in paragraph (a)(1)(ii) of this section, the total amount of assistance from the Department or any other entity that is likely to be made available on a formula basis or in the form of program income as defined in 24 CFR part 85.

(2) In the case of assistance that will be provided pursuant to contract over a period of time (such as project-based assistance under Section 8 of the United States Housing Act of 1937), all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

(b) *Content of disclosure.* Applicants that receive or can reasonably be expected to receive, as defined in paragraph (a) of this section, an aggregate amount of assistance that is in excess of $200,000 must disclose the following information:

(1) Other governmental assistance that is or is expected to be made available, based upon a reasonable assessment of the circumstances, with respect to the project or activities for which the assistance is sought;

(2) The name and pecuniary interest of any interested party; and

(3) A report of the expected sources and uses of funds for the project or activity which is the subject of the application, including governmental and non-governmental sources of funds and private capital resulting from tax benefits.

(c) In the case of mortgage insurance under 24 CFR subtitle B, chapter II, the mortgagor is responsible for making the disclosures required under Section 102(b) and this section, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department.

(Approved by the Office of Management and Budget under control number 2510–0011.)

§ 4.11 Updating of disclosure.

(a) During the period in which an application for assistance covered under Section 102(b) is pending, or in which such assistance is being provided, the applicant must report to the Department, or to the State or unit of general local government, as appropriate:

(1) Any information referred to in Section 102(b) that the applicant should have disclosed with respect to the application, but did not disclose;

(2) Any information referred to in Section 102(b) that initially arose after the time for making disclosures under that subsection, including the name and pecuniary interest of any person who did not have a pecuniary interest in the project or activity that exceeded the threshold in Section 102(b) at the time of the application, but that subsequently exceeded the threshold.

(b) With regard to changes in information that was disclosed under Sections 102(b) or 102(c):

(1) For programs administered by the Assistant Secretary for Community Planning and Development:

(i) Any change in other government assistance covered by Section 102(b) that exceeds the amount of all assistance that was previously disclosed by the lesser of $250,000 or 10 percent of the assistance;

(ii) Any change in the expected sources or uses of funds that exceed the amount of all previously disclosed sources or uses by the lesser of $250,000 or 10 percent of previously disclosed sources;

(2) For all other programs:

(i) Any change in other government assistance under Section 102(b)(1) that exceeds the amount of assistance that was previously disclosed;

(ii) Any change in the pecuniary interest of any person under Section 102(b)(2) that exceeds the amount of all previously disclosed interests by the lesser of $50,000 or 10 percent of such interest;

(iii) For all projects receiving a tax credit under Federal, Sate or local law, any change in the expected sources or uses of funds that were previously disclosed;

(iv) For all other projects:

(A) Any change in the expected source of funds from a single source that exceeds the lesser of the amount previously disclosed for that source of funds by $250,000 or 10 percent of the funds previously disclosed for that source;

(B) Any change in the expected sources of funds from all sources previously disclosed that exceeds the lesser of $250,000 or 10 percent of the amounts previously disclosed from all sources of funds;

(C) Any change in a single expected use of funds that exceeds the lesser of $250,000 or 10 percent of the previously disclosed use;

(D) Any change in the use of all funds that exceeds the lesser of $250,000 or 10 percent of the previously disclosed uses for all funds.

(c) *Period of coverage.* For purposes of updating of Section 102(c), an application for assistance will be considered to be pending from the time the application is submitted until the Department communicates its decision with respect to the selection of the applicant.

(Approved by the Office of Management and Budget under control number 2510–0011.)

§ 4.13 Limitation of assistance subject to Section 102(d).

(a) In making the certification for assistance subject to Section 102(d), the Secretary will consider the aggregate amount of assistance from the Department and from other sources that is necessary to ensure the feasibility of the assisted activity. The Secretary will take into account all factors relevant to feasibility, which may include, but are not limited to, past rates of returns for owners, sponsors, and investors; the long-term needs of the project and its tenants; and the usual and customary fees charged in carrying out the assisted activity.

(b) If the Department determines that the aggregate of assistance within the jurisdiction of the Department to a housing project from the Department and from other governmental sources exceeds the amount that the Secretary determines is necessary to make the assisted activity feasible, the Department will consider all options available to enable it to make the required certification, including reductions in the amount of Section 8 subsidies. The Department also may impose a dollar-for-dollar, or equivalent, reduction in the amount of HUD assistance to offset the amount of other government assistance. In grant programs, this could result in a reduction of any grant amounts not yet drawn down. The Department may make these adjustments immediately, or in conjunction with servicing actions anticipated to occur in the near future (*e.g.,* in conjunction with the next annual adjustment of Section 8 rents).

(c) If an applicant does not meet the $200,000 disclosure requirement in § 4.7(b), an applicant must certify whether there is, or is expected to be made, available with respect to the housing project any other governmental assistance. The Department may also require any applicant subject to this subpart A to submit such a certification in conjunction with the Department's processing of any subsequent servicing action on that project. If there is other government assistance for purposes of the two preceding sentences, the

applicant must submit such information as the Department deems necessary to make the certification and subsequent adjustments under Section 102(d).

(d) The certification under Section 102(d) shall be retained in the official file for the housing project.

Subpart B—Prohibition of Advance Disclosure of Funding Decisions

§ 4.20 Purpose.

The provisions of this subpart B are authorized under section 103 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (42 U.S.C. 3537a) (hereinafter, Section 103). Both the provisions of Section 103 and this subpart B apply for the purposes of Section 103. Section 103 proscribes direct or indirect communication of certain information during the selection process by HUD employees to persons within or outside of the Department who are not authorized to receive that information. The purpose of the proscription is to preclude giving an unfair advantage to applicants who would receive information not available to other applicants or to the public. Section 103 also authorizes the Department to impose a civil money penalty on a HUD employee who knowingly discloses protected information, if such a violation of Section 103 is material, and authorizes the Department to sanction the person who received information improperly by, among other things, denying assistance to that person.

§ 4.22 Definitions.

Application means a written request for assistance regardless of whether the request is in proper form or format.

Assistance does not include any contract (e.g., a procurement contract) that is subject to the Federal Acquisition Regulation (FAR) (48 CFR ch. 1).

Disclose means providing information directly or indirectly to a person through any means of communication.

Employee includes persons employed on a full-time, part-time, or temporary basis, and special government employees as defined in 18 U.S.C. 202. The term applies whether or not the employee is denoted as an officer of the Department. ''Employee'' is to be construed broadly to include persons who are retained on a contractual or consultative basis under an Office of Human Resources appointment. However, ''employee'' does not include an independent contractor, e.g., a firm or individual working under the authority of a procurement contract.

Material or materially means in some influential or substantial respect or having to do more with substance than with form.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

Selection process means the period with respect to a selection for assistance that begins when the HUD official responsible for awarding the assistance involved, or his or her designee, makes a written request (which includes the selection criteria to be used in providing the assistance) to the Office of General Counsel (OGC) to prepare the NOFA, solicitation, or request for applications for assistance for publication in the Federal Register. The period includes the evaluation of applications, and concludes with the announcement of the selection of recipients of assistance.

§ 4.24 Scope.

(a) *Coverage.* The prohibitions against improper disclosure of covered selection information apply to any person who is an employee of the Department. In addition, the Department will require any other person who participates at the invitation of the Department in the selection process to sign a certification that he or she will be bound by the provisions of this part.

(b) *Applicability.* The prohibitions contained in this part apply to conduct occurring on or after June 12, 1991.

§ 4.26 Permissible and impermissible disclosures.

(a) Notwithstanding the provisions of Section 103, an employee is permitted to disclose information during the selection process with respect to:

(1) The requirements of a HUD program or programs, including unpublished policy statements and the provision of technical assistance concerning program requirements, provided that the requirements or statements are disclosed on a uniform basis to any applicant or potential applicant. For purposes of this part, the term ''technical assistance'' includes such activities as explaining and responding to questions about program regulations, defining terms in an application package, and providing other forms of technical guidance that may be described in a NOFA. The term ''technical assistance'' also includes identification of those parts of an application that need substantive improvement, but this term does not include advising the applicant how to make those improvements.

(2) The dates by which particular decisions in the selection process will be made;

(3) Any information which has been published in the Federal Register in a NOFA or otherwise;

(4) Any information which has been made public through means other than the Federal Register;

(5) An official audit, inquiry or investigation, if the disclosure is made to an auditor or investigator authorized by the HUD Inspector General to conduct the audit or investigation;

(6) Legal activities, including litigation, if the disclosure is made to an attorney who is representing or is otherwise responsible to the Department in connection with the activities; or

(7) Procedures that are required to be performed to process an application, e.g., environmental or budget reviews, and technical assistance from experts in fields who are regularly employed by other government agencies, provided that the agency with which the expert is employed or associated is not an applicant for HUD assistance during the pending funding cycle.

(b) An authorized employee, during the selection process, may contact an applicant for the purpose of:

(1) Communication of the applicant's failure to qualify, after a preliminary review for eligibility and completeness with respect to his or her application, and the reasons for the failure to qualify, or the fact of the applicant's failure to be determined to be technically acceptable after a full review; or

(2) Clarification of the terms of the applicant's application. A clarification, for the purpose of this paragraph (b), may include a request for additional information consistent with regulatory requirements.

(c) Prohibition of advance disclosure of funding decisions. During the selection process an employee shall not knowingly disclose any covered selection information regarding the selection process to any person other than an employee authorized to receive that information.

(1) The following disclosures of information are, at any time during the selection process, a violation of Section 103:

(i) Information regarding any applicant's relative standing;

(ii) The amount of assistance requested by any applicant;

(iii) Any information contained in an application;

(2) The following disclosures of information, before the deadline for the submission of applications, shall be a violation of Section 103:

(i) The identity of any applicant; and

(ii) The number of applicants.

§ 4.28 Civil penalties.

Whenever any employee knowingly and materially violates the prohibition in Section 103, the Department may impose a civil money penalty on the employee in accordance with the provisions of 24 CFR part 30.

§ 4.30 Procedure upon discovery of a violation.

(a) *In general.* When an alleged violation of Section 103 or this subpart B comes to the attention of any person, including an employee, he or she may either:

(1) Contact the HUD Ethics Law Division to provide information about the alleged violation; or

(2) Contact the HUD Office of Inspector General to request an inquiry or investigation into the matter.

(b) *Ethics Law Division.* When the Ethics Law Division receives information concerning an alleged violation of Section 103, it shall refer the matter to the Inspector General stating the facts of the alleged violation and requesting that the Inspector General make an inquiry or investigation into the matter.

(c) *Inspector General.* When the Inspector General receives information concerning an alleged violation of Section 103 or this subpart B, he or she shall notify the Ethics Law Division when the Inspector General begins an inquiry or investigation into the matter.

(d) *Protection of employee complainants.* (1) No official of the Ethics Law Division, after receipt of information from an employee stating the facts of an alleged violation of this part, shall disclose the identity of the employee without the consent of that employee. The Inspector General, after receipt of information stating the facts of an alleged violation of this part, shall not disclose the identity of the employee who provided the information without the consent of that employee, unless the Inspector General determines that disclosure of the employee's identity is unavoidable during the course of an investigation. However, any employee who knowingly reports a false alleged violation of this part is not so protected and may be subject to disciplinary action.

(2) Any employee who has authority to take, direct others to take, recommend or approve a personnel action is prohibited from threatening, taking, failing to take, recommending, or approving any personnel action as reprisal against another employee for providing information to investigating officials.

§ 4.32 Investigation by Office of Inspector General.

The Office of Inspector General shall review every alleged violation of Section 103. If after a review the Office of Inspector General determines that further investigation is not warranted, it shall notify the Ethics Law Division of that determination. If, after a review, the Office of Inspector General determines that additional investigation is warranted, it shall conduct the investigation and upon completion issue a report of the investigation to the Ethics Law Division as to each alleged violation.

§ 4.34 Review of Inspector General's report by the Ethics Law Division.

After receipt of the Inspector General's report, the Ethics Law Division shall review the facts and circumstances of the alleged violations. In addition, the Ethics Law Division may:

(a) Return the report to the Inspector General with a request for further investigation;

(b) Discuss the violation with the employee alleged to have committed the violation; or

(c) Interview any other person, including employees who it believes will be helpful in furnishing information relevant to the inquiry.

§ 4.36 Action by the Ethics Law Division.

(a) After review of the Inspector General's report, the Ethics Law Division shall determine whether or not there is sufficient information providing a reasonable basis to believe that a violation of Section 103 or this subpart B has occurred.

(b) If the Ethics Law Division determines that there is no reasonable basis to believe that a violation of Section 103 or this subpart B has occurred, it shall close the matter and send its determination to the Office of Inspector General.

(c) If the Ethics Law Division determines that there is sufficient information to provide a reasonable basis to believe that a violation of Section 103 or this subpart B has occurred, it shall:

(1) Send its determination to the Office of Inspector General; and

(2) Refer the matter to the appropriate official for review as to whether to impose a civil money penalty in accordance with 24 CFR part 30; provided, however, that the Ethics Law Division shall not make a civil money penalty recommendation unless it finds the violation to have been knowing and material. The decision to impose a civil money penalty in a particular matter may be made only upon referral from the Ethics Law Division.

(d) In determining whether a violation is material, the Ethics Law Division shall consider the following factors, as applicable:

(1) The content of the disclosure and its significance to the person to whom the disclosure was made;

(2) The time during the selection process when the disclosure was made;

(3) The person to whom the disclosure was made;

(4) The dollar amount of assistance requested by the person to whom the disclosure was made;

(5) The dollar amount of assistance available for a given competition or program;

(6) The benefit, if any, received or expected by the employee, the employee's relatives or friends, or any other person with whom the employee is affiliated;

(7) The potential injury to the Department.

(e) If the Ethics Law Division determines that there is sufficient information to provide a reasonable basis to believe that a violation of Section 103 or this subpart B has occurred, it may, in addition to referring the matter under 24 CFR part 30, refer the matter to an appropriate HUD official for consideration of any other available disciplinary action. Any referral authorized by this paragraph (e) shall be reported to the Inspector General and may be reported to the employee's supervisor.

§ 4.38 Administrative remedies.

(a) If the Department receives or obtains information providing a reasonable basis to believe that a violation of Section 103 has occurred, the Department may impose a sanction, as determined to be appropriate, upon an applicant for or a recipient of assistance who has received covered selection information.

(b) In determining whether a sanction is appropriate and if so which sanction or sanctions should be sought, the Secretary shall give consideration to the applicant's conduct with respect to the violation. In so doing, the Secretary shall consider the factors listed at § 4.36(d), as well as any history of prior violations in any HUD program, the benefits received or expected, deterrence of future violations and the extent of any complicity in the violation.

(c) The Secretary may impose a sanction authorized by this section whether or not the Ethics Law Division refers a case under 24 CFR part 30, and

whether or not a civil money penalty is imposed.

PART 12—[REMOVED]

2. Part 12 is removed.

Dated: March 27, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96–7921 Filed 3–29–96; 8:45 am]

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Part XII

Department of Housing and Urban Development

24 CFR Part 811

Office of the Assistant Secretary for Housing—Federal Housing Commissioner: Regulatory Reinvention, Tax Exemption of Obligations of Public Housing Agencies and Related Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 811

[Docket No. FR–3985–F–01]

RIN: 2502–AG64

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Regulatory Reinvention; Tax Exemption of Obligations of Public Housing Agencies and Related Amendments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the tax exemption of obligations of public housing agencies. In an effort to implement the President's regulatory reform initiative, this rule will streamline these regulations by eliminating provisions that are redundant of statutes or otherwise unnecessary. Further, on April 20, 1995 (60 FR 19695), HUD published a rule proposing to amend these regulations to codify the guidelines which have governed Section 8 bond refundings. This rule finalizes the policies and procedures set forth in the April 20, 1995 proposed rule, and discusses the issues raised by public comments submitted on the proposed rule. The rule also makes a clarifying amendment to the existing regulations.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: James Mitchell, Director, Financial Services Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, room 3120, Washington, DC 20024, telephone number (202) 708–7450, ext. 125 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Part 811 and the President's Regulatory Reinvention Initiative

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. As part of this review, HUD examined its regulations at 24 CFR part 811, which govern the tax exemption of obligations of public housing agencies. HUD has determined that 24 CFR part 811 can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in part 811 repeat statutory language from the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). It is unnecessary to repeat statutory requirements in the Code of Federal Regulations, since these requirements are otherwise fully accessible and binding. Furthermore, regulatory provisions which reiterate statutory language, must be amended each time Congress amends the statute. Therefore, this final rule removes redundant statutory language and replaces it with a citation to the specific statutory section.

Some provisions in part 811 are now obsolete. For instance, this rule removes obsolete provisions that were designed for the original construction or substantial rehabilitation of subsidized Section 8 rental housing. Further, the program described in subpart B of part 811, concerning the purchase of GNMA guaranteed mortgage-backed securities with tax exempt obligations, has never been implemented by HUD. Accordingly, this final rule removes subpart B.

Lastly, some provisions in part 811 are not regulatory requirements. For example, several sections in the regulations contain nonbinding guidance or explanations. While this information is very helpful to HUD's clients, HUD will more appropriately provide this information through handbook guidance or other materials rather than maintain it in title 24 of the Code of Federal Regulations.

B. The April 20, 1995 Proposed Rule

1. Proposed Amendments Made by the April 20, 1995 Rule

On April 20, 1995 (60 FR 19695), HUD published for public comment a rule proposing to amend 24 CFR part 811 to codify the guidelines that have governed Section 8 bond refundings.

HUD's regulations at 24 CFR part 811, subpart A govern HUD's issuance of a Notification of Tax Exemption. These regulations were designed for the original construction or substantial rehabilitation of subsidized Section 8 rental housing. Refunding transactions not involving construction funding have required the Assistant Secretary for Housing-FHA Commissioner to issue a Notification of Tax Exemption that waives several sections of 24 CFR part 811, subpart A. This waiver process elevates to the Assistant Secretary level a programmatic approval that has become routine and perfunctory in recent years.

The April 20, 1995 rule proposed to create a new § 811.119,[1] which would codify the policy and procedural guidelines that have governed Section 8 bond refundings since 1989. The new section would provide a self-contained refunding regulation that would dispense with the need for most waivers. The preamble to the April 20, 1995 proposed rule described in detail the amendments to 24 CFR part 811, subpart A.

2. Discussion of Public Comments on the April 20, 1995 Proposed Rule

The public comment period on the proposed rule expired on June 19, 1995. By close of business on that date, a total of 6 comments had been received. The following section of the preamble presents a summary of the significant issues raised by the public commenters on the proposed rule, and HUD's responses to these comments.

Proposed § 811.119(g) Exceeded HUD Authority

Comment. Paragraph (g) of proposed § 811.119 stated that ''HUD will consent to release reserves, as provided by the Trust Indenture, in an amount remaining after correction of project physical deficiencies and/or replenishment of replacement reserves * * * upon execution by the project owner of a use agreement, and amendment of a regulatory agreement, if applicable, to extend low-income tenant occupancy for ten years after expiration of the HAPC.'' Four of the commenters believed that this provision exceeded HUD's authority.

The commenters noted that the provisions of proposed paragraph (g) were not included in the ''old reg'' version of 24 CFR part 811, which was effective from September, 1977 until March, 1979. These commenters believed that to the extent paragraph (g) purported to apply to transactions financed under the ''old regs'', HUD would be violating the contractual rights of participants in those transactions. The commenters noted that there appears to be no legal basis for the requirement that HUD approve the

[1] As a result of the streamlining amendments made in compliance with President Clinton's regulatory reform initiative, several sections in part 811 have been renumbered. This rule finalizes proposed § 811.119 at § 811.110. Substantively, § 811.110 is identical to proposed § 811.119, except where changes have been made in response to public comment. The preamble to this final rule contains a discussion of the public comments received on the April 20, 1995 proposed rule, and HUD's responses to them.

release of reserves from trust indentures that are being refunded, defeased or prepaid. In most ''old reg'' transactions those reserves belong to the project owners upon defeasance of the prior bonds. The commenters believed that HUD's attempt to condition the release of the owner's money upon the owner's entrance into a use agreement raised serious legal and constitutional issues.

HUD Response. HUD interprets the prohibition of refundings described in § 811.106(d) of the ''old regs'' to apply to refundings of outstanding section 11(b) bonds by any means, not only by a new section 11(b) bond issue. Therefore, a waiver of ''old reg'' § 811.106(d) is required to refund ''old reg'' bonds. The waiver of a regulatory provision is more than a perfunctory function, since HUD must first determine that the public will benefit by the waiver.

HUD does not dispute that project owners or PHAs are entitled to reserve balances as provided in ''old reg'' indentures. However, HUD considers it sensible to review the condition of the project and its future as low-income housing before these usually large sources of funds are used for purposes unrelated to the project. Further, it is not unreasonable for PHAs to extend low-income occupancy for a period of ten years in return for use of the released reserves.

HUD also notes that many ''old reg'' indentures specifically require that HUD consent to the refunding of the bonds. The ''old regs'' at § 811.107(d) provide that excess reserves shall be used for project purposes. HUD has waived this requirement to accommodate refundings which use reserves for other purposes, provided that HUD found no need for physical repairs. However, HUD believes it is reasonable to give the project first consideration.

The final rule has been revised to increase flexibility in the case of privately owned projects. Specifically, the final rule provides that the use extension may be waived on the basis of some other public benefit, such as transfer of ownership to a nonprofit entity, or correction of project physical or operating deficiencies. This exercise of HUD waiver authority to secure a sound resource of low-income housing will benefit HUD, PHAs, owners, and project residents.

This final rule also clarifies that in those instances involving a simple defeasance without pay-off of ''old reg'' section 11(b) bonds, HUD will review the financing terms only to the extent that a HUD approval is needed in the transaction.

Proposed Rule's Relation to 24 CFR Part 883 Unclear

Comment. Three commenters wondered whether the proposed rule applied to bonds issued by approved state housing finance agencies pursuant to 24 CFR part 883. One of the commenters wrote that the April 20, 1995 proposed rule was contradictory on the issue of its applicability to part 883. The preamble to the proposed rule stated that the rule applied only to refundings of bonds exempt under Section 11(b). However, the commenter noted that proposed § 811.119 contained at least one reference to part 883 in paragraph (c), and paragraphs (f) and (h) appeared to address all McKinney Act refundings of Section 8 projects regardless of the source of the tax-exemption.

Another commenter was particularly concerned about paragraph (c) of proposed § 811.119. The first sentence of paragraph (c) stated that ''[c]ompliance with §§ 811.104 and 811.105 shall not be required for refunding obligations which derive tax exemption from authority other than Section 11(b) of the [United States Housing Act of 1937].'' The commenter believed that by stating that non-11(b) bonds need not comply with §§ 811.104 and 811.105, it could be argued that bonds issued pursuant to part 883 must comply with all other provisions of part 811.

The commenter also worried about the second sentence of paragraph (c), which stated that ''compliance with the provisions of 24 CFR part 883 shall be required to the extent bond counsel finds such provisions applicable.'' The commenter believed that this sentence could be interpreted to permit bond counsel, in part 883 refundings of part 883 bonds, to select those provisions of part 883 it thought applicable, and ignore the rest of the regulatory provisions.

The commenter suggested that paragraph (c) of proposed § 811.119 be revised to state that it does not apply to bonds issued by State Agencies under 24 CFR part 883 and which derive tax exemption from authority other than Section 11(b) of the United States Housing Act of 1937.

HUD Response. HUD has clarified the final rule to explicitly limit its applicability to State Agency Section 8 bond issues to: (1) Reiteration of the prohibition of duplicate fees in part 883; and (2) in the case of McKinney Act refundings, compliance with paragraphs (f) and (h) of § 811.110. Further, in response to the second commenter, HUD has amended the rule to clarify that its requirements apply only to refunding bonds issued pursuant to § 811.110. This final rule also removes the first two sentences of paragraph (c) of proposed § 811.119.

Proposed Rule's Relationship to Internal Revenue Code Unclear

Comment. The first sentence of proposed § 811.119(c) stated that ''[c]ompliance with §§ 811.104 and 811.105 shall not be required for refunding obligations which derive tax exemption from authority other than Section 11(b).'' Proposed § 811.119(i) stated that ''[r]efunding bonds, including interest thereon, approved under proposed § 811.119 shall be exempt from all taxation now or hereafter imposed by the United States.'' Two commenters pointed out that since 1982 all tax exempt bonds, including section 11(b) bonds, must comply with the Internal Revenue Code. Compliance with 24 CFR part 811 alone is no longer sufficient for tax-exemption.

The commenters believed that paragraphs (c) and (i) could easily be read to suggest that only compliance with 24 CFR part 811 is necessary for tax exemption. The commenters suggested that the final rule explicitly state that compliance with part 811 does not eliminate the need to comply with the Internal Revenue Code.

HUD Response. HUD agrees with the commenters that the proposed rule required clarification on the relationship between part 811 and the Internal Revenue Code. Accordingly, the final rule has been revised to provide that compliance with the requirements of 24 CFR part 811 does not assure compliance with the relevant provisions of the Internal Revenue Code.

Paragraph (h) of Proposed § 811.119 Was Too Limiting

Comment. The first sentence of paragraph (h) of proposed § 811.119 stated that ''[a]gencies shall have wide latitude in the design of specific delivery vehicles for use of McKinney Act savings.'' Paragraph (h) went on to set forth a list of eligible activities for which savings ''shall'' be utilized. Three commenters believed that the remainder of paragraph (h) contradicted the flexibility promised in the first sentence. Furthermore, the commenters believed that paragraph (h) was more restrictive than current HUD practice.

The commenters suggested similar remedies for the perceived strictness of paragraph (h). One of the commenters suggested that the word ''shall'' in the second sentence of paragraph (h) be replaced with the word ''may.'' The commenter also recommended that

HUD include at the end of the sentence an additional phrase permitting ''other activities approved by HUD.'' Another of the commenters recommended that HUD add a new third sentence to the following effect: ''These include programs designed to assist in obtaining shelter such as rent subsidy and similar tenant based programs.''

HUD Response. HUD agrees with the commenters and has adopted all their suggestions in this final rule.

Rule Should Reference ''Trustee Sweeps''

Comment. Paragraph (d) of proposed § 811.119 stated that the Assistant Secretary's approval of the Notification of Tax Exemption would be based on the conformity of the ''refunding's terms and conditions * * * to subpart A's requirements, including[,] * * * where possible, reduction of Section 8 assistance payments through lower contract rents or equivalent means.'' One of the commenters wondered whether paragraph (d) covered a subsidy recapture method known as the ''Trustee Sweep.'' According to the commenter most of the FHA-Insured Section 8 refundings that have occurred have used this method.

HUD Response. This final rule clarifies that the ''Trustee Sweep'' is a permissible subsidy recapture method.

Proposed Rule Failed To Take Underwriters Into Account

Comment. Paragraph (e)(1) of proposed § 811.119 stated that HUD's evaluation of the Section 8 refunding proposal ''shall determine that the proposed amount of refunding obligations is the amount needed to * * * fund a debt service reserve to the extent required by bond rating agencies which rate the credit quality of the refunding bonds.'' Two commenters believed that paragraph (e)(1) of proposed § 811.119 failed to cover certain financings. The commenters wrote that in financings closed on a non-rated basis, the underwriter, as opposed to the Rating Agency, will often require a debt service reserve fund based upon its determination of investor requirements. The commenters suggested that the final rule allow for the sizing of the debt service reserve in this manner.

HUD Response. This final rule adopts the recommendation made by the commenters and recognizes that debt service reserves may also be required by credit enhancers and, for unrated bonds, by the underwriter.

Repayment Term Limit Requires Change

Comment. Two commenters expressed concern over paragraph (e)(2) of proposed § 811.119, which prohibited the repayment term of the refunding bonds from exceeding the remaining term of the project's mortgage, or in the absence of a mortgage, the HAP Contract. One of the commenters wrote that the proposed paragraph was insufficiently broad. This commenter pointed out that in MBIA transactions the insurer requires that the maturity of the bonds extend a year beyond the mortgage maturity. The bonds are redeemed concurrently with mortgage maturity but the stated maturity is longer.

The commenter also believed that paragraph (e)(2) would create unnecessary difficulties for some agencies seeking to refinance. The commenter noted that in the original 11(b) financings, the transactions had to be structured based on an estimate of when the project was to be completed. Based on that estimate, the expiration of the HAP contract was derived. This expiration date became the basis for the maturity of the bonds, since the HAP contract was the primary security for the bonds. However, in some financings, the project was completed sooner than anticipated and, therefore, the HAP contract was executed earlier than estimated. In those instances the HAP contract could expire sometime before the maturity date of the bonds.

The commenter felt that by requiring that refunding bonds mature at a date not exceeding the expiration of the HAP contract, the rule would produce structuring problems as a result of the term of the refunding bonds being forced to be shorter than the term of the bonds they are refunding. However, the commenter noted that if the HAP contract term is later than the original bond term, it might be advantageous to have a bond term that takes full advantage of the HAP contract term. The commenter suggested that HUD allow the term of the bonds on uninsured loan transactions to extend to the later of the expiration of the HAP contract or the final maturity of the refunded bonds.

Another commenter believed paragraph (e)(2) of proposed § 811.119 posed compliance difficulties for agencies seeking to refinance projects at lower interest rates. The commenter noted that in order to comply with rating agency structuring criteria relating to debt service reserve funds in transactions where there is an insured mortgage loan, the bonds often are structured to mature between 6 months and one year after the last required mortgage payment. This is necessary because mortgage loans with grace periods are assumed by rating agencies and bond underwriters to be received at the end of the grace period. A second reason for this requirement is the potential that a mortgage loan might be in default at the time of its stated maturity, requiring an invasion of the debt service reserve fund pending disbursement of FHA mortgage insurance proceeds, which could be received after final due date of the last mortgage payment. Rating agencies typically require a structure in which up to one year is assumed to elapse between the date of default on the mortgage and the receipt of the final installment of FHA mortgage insurance proceeds. Accordingly, the commenter suggested that paragraph (e)(2) be amended to add the words ''by more than one year'' after the phrase ''may not exceed.''

HUD Response. HUD agrees with these comments and has incorporated them in the final rule.

The Proposed Rule Created Uncertainty About the Continuation of Current HUD Practices

Comment. One commenter believed that paragraph (f) of proposed § 811.119 created uncertainty among agencies seeking to refinance. This paragraph stated that for McKinney Act Projects, HUD would split the savings with an agency, in accordance with the terms of the Refunding Agreement. Paragraph (f) required that the Refunding Agreement incorporate the agency's Housing Plan. The paragraph further mandated that the Housing Plan provide for ''decent, safe, and sanitary housing for very-low income households.'' Additionally, the Housing Plan was required to ''address the physical condition of the projects participating in the refunding which generate[d] the McKinney Act savings and, if necessary, provide for the correction of existing deficiencies which [could] not be funded completely by existing project replacement reserves and/or by a portion of refunding bond proceeds.''

The commenter believed that paragraph (f) was inconsistent with existing HUD policies. First, the commenter believed paragraph (f) contradicted a HUD memorandum concerning savings splits. Furthermore, the commenter wrote that HUD has approved the application of savings for uses other than those required by paragraph (b). For example, the commenter claimed that HUD has not required that savings be used to benefit a specific project. The commenter also wrote that savings currently need to be

used in connection with low-income households, as distinguished from very-low-income households.

HUD Response. HUD acknowledges that the proposed rule did not accurately reflect HUD's current policy regarding savings splits. Accordingly, this final rule corrects this discrepancy by providing that for McKinney Act refundings of projects which did not receive a Financing Adjustment Factor (''FAF''), HUD will allow up to 50 percent of debt service savings to be allocated to the project account. In such cases, the remainder of the debt service savings will be shared equally by the agency and the U.S. Treasury. However, the other assertions made by the commenter are incorrect. For example, section 1012(a) of the McKinney Act restricts assistance to ''very low-income families.'' (42 U.S.C. 1437f note.)

Revision of Bond Counsel Certification Requirement

Comment. The last sentence of paragraph (d) of proposed § 811.119 stated that the results of a refunding bond sale had to ''certified'' by bond counsel. One commenter was disturbed by the use of the word ''certified.'' The commenter wrote that bond counsel are not in a position to certify such matters, other than in reliance on information provided by other parties. Another commenter, while not objecting to the term ''certify'', noted that bond counsel are seldom financial experts. The commenter suggested that the rule be amended to permit certification by a bona fide financial expert, such as a certified public accountant or an investment banker.

HUD Response. HUD has adopted both comments. This final rule uses the term ''written confirmation'', rather than ''certify.'' Further, it permits ''other acceptable closing participants'' to provide written confirmation.

Flexible Yield Limitation Required

Comment. Paragraph (e)(3) of proposed § 811.119 limited the bond yield to not more than 75 basis points above the 20 Bond General Obligation Index ''published by the Daily Bond Buyer for the week immediately preceding the sale of the bonds.'' One commenter felt that this paragraph would place the continuation of current HUD practices in doubt, and might create the necessity for waivers.

The commenter noted that HUD has in the past waived the bond yield limitation for certain financings. Furthermore, HUD from time to time published notices which allowed a 150 basis point spread on uninsured deals. The commenter suggested that paragraph (e)(3) be amended to add ''except as otherwise approved by HUD'', in order to eliminate the need for waivers.

HUD Response. In recognition of rating agency concerns about the future renewability of HAP contracts, HUD has revised the final rule to incorporate the phrase suggested by the commenter. However, HUD's experience has shown that the 20 Bond General Obligation Index plus 75 basis points provides a valid market sensitive yield limit for a variety of transactions.

Paragraph (d) of Proposed § 811.119 Required Clarification

Comment. One commenter raised several concerns over paragraph (d) of proposed § 811.119. This paragraph stated that ''[u]pon conclusion of the sale of refunding bonds, the results must be certified to HUD by bond counsel, including a schedule of the specific amount of savings in Section 8 assistance where applicable, and a final statement of Sources and Uses.''

The commenter pointed out that the term ''sale'' usually signifies the signing of a Bond Purchase Agreement, at which time it may be premature to provide the information requested by paragraph (d). This commenter suggested that the word ''closing'' be substituted for ''sale.'' The commenter was also uncertain about the information HUD meant to include in the term ''results.''

HUD Response. HUD agrees with the points raised by the commenter. Accordingly, the final rule has been revised to use the term ''closing'', rather than ''sale.'' Further, this final rule replaces the term ''results'' with a specific list of the closing information required by HUD.

Paragraph (e) of Proposed § 811.119 Was Vague

Comment. One of the commenters believed that paragraph (e) of proposed § 811.119 was vague. For example, paragraph (e)(2) prohibited the repayment term of the refunding bonds from exceeding the remaining term of the ''project mortgage, or in the absence of a mortgage, the remaining term of the Housing Assistance Payments Contract (the 'HAPC').'' The commenter wondered whether HUD meant an insured or uninsured mortgage. The commenter also believed that paragraph (e)(3) required further clarification on servicing and trustee fees. The proposed rule limited these fees to ''[a]n amount not to exceed one-fourth of one percent annually of the bonds.'' The commenter felt it would be ''advisable to allow for the calculation of fees to be based on the outstanding mortgage balance.''

HUD Response. HUD has amended the final rule to provide the clarification requested by the commenter. The final rule clarifies that the term ''project mortgage'' refers to an insured mortgage. Further, the final rule specifies that the limit on servicing and trustee fees is based on the outstanding principal balance of the bonds.

Definition of McKinney Act Project Was Vague

Paragraph (f) of proposed § 811.119 concerned ''projects placed under HAPC between January 1, 1979 and December 31, 1984 (otherwise known as 'McKinney Act Projects').'' One commenter believed that HUD should clarify what constitutes a ''McKinney Act Project.'' The commenter pointed out that HUD has construed this ambiguous statutory language to cover projects for which the date of HAPC execution fell within January 1, 1979 and December 31, 1984, as distinguished from the effective date of the HAPC, or conceivably the AHAP date. The commenter suggested that the final rule make this construction explicit.

HUD Response. HUD has adopted the recommendation made by the commenter. The final rule defines a ''McKinney Act Project'' as a project ''for which the Agreement to enter into the HAPC was executed between January 1, 1979 and December 31, 1984.''

Paragraph (g) of Proposed § 811.119 Ambiguous in the Case of HAPCs With Renewable Five-Year Terms

Comment. Paragraph (g) of proposed § 811.119 conditioned the release of reserves upon the project owner's agreement ''to extend low income tenant occupancy for ten years after expiration of the HAPC.'' One commenter believed that this provision could be ambiguous in the case of a HAPC with renewable five-year terms. The commenter wondered whether paragraph (g) meant ten years after HUD's or the Contract Administrator's first right to terminate, ten years after the owner's first opt-out date without HUD consent, or ten years after the budget authority term.

HUD Response. HUD has revised the final rule to specify that the use agreement must extend for ten years past the owner's first opt-out date.

Payments to Providers of Professional Services

Comment. One of the commenters felt there was some ambiguity in the relationship between the last two sentences of paragraph (h) of proposed § 811.119. The penultimate sentence

authorized homeownership counseling as an eligible use of savings. However, the last sentence prohibited payments to third party consultants.

HUD Response. This final rule permits fees to providers of professional services required in an agency's McKinney Act program.

C. Clarifying Amendment to § 811.105

This rule also makes a clarifying technical amendment to paragraph (b) of § 811.105. Under § 811.102, the term ''Agency or Instrumentality PHA'' is defined as an ''organization that is authorized to engage or assist in the development or operation of low-income housing.'' However, paragraph (b) of § 811.105 requires that the ''charter or other organic document establishing the [Agency or Instrumentality PHA] shall limit the activities to be performed * * * to carrying out Section 8 projects.''

Paragraph (b) of § 811.105 unnecessarily restricts the activities which may be undertaken by an Agency or Instrumentality PHA. This limitation does not conform to the broad language of the definition in § 811.102. Further, § 811.105 does not comply with HUD's goal of expanding low-income housing opportunities through the part 811 program regulations. The current language also requires that HUD waive § 811.105 each time an Agency or Instrumentality PHA seeks to undertake an activity which is not a Section 8 project. The imposition of this additional administrative barrier is contrary to the goals of the President's reinvention Initiative, which calls for the elimination of unnecessary bureaucratic delays.

This final rule amends paragraph (b) of § 811.105 to provide that Agency and Instrumentality PHAs may carry out Section 8 projects and ''other low-income housing projects approved by the Secretary.'' This change will conform § 811.105 to HUD's original intention in the issuance of the part 811 regulations.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if 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). HUD finds that in this case it is unnecessary to solicit public comment.

HUD has already solicited public comment for those amendments to part 811 described in the April 20, 1995 proposed rule. The preamble to this final rule contains a discussion of the comments received and of HUD's responses to them. The streamlining amendments made in conformity with the President's regulatory reinvention initiative do not affect or establish policy. These amendments merely remove regulatory provisions which are redundant of statutes or for which codification in the Code of Federal Regulations is unnecessary. Further, it is unnecessary for HUD to solicit comment on the clarifying amendment to § 811.105. This revision merely removes an administrative barrier which currently limits the flexibility of program applicants. The change will eliminate the necessity for waivers and will conform the regulations to HUD's original intent in issuing 24 CFR part 811.

III. Other Matters

A. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

B. Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the Tax Exempt Obligations Program. That finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays 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.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that 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. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

D. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or 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.

List of Subjects in 24 CFR Part 811

Public housing, Securities, Taxes.

Accordingly, 24 CFR part 811 is amended to read as follows:

PART 811—TAX EXEMPTION OF OBLIGATIONS OF PUBLIC HOUSING AGENCIES AND RELATED AMENDMENTS

1. The authority citation for 24 CFR part 811 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437c, 1437f, and 3535(d).

Subpart A—[Removed]

2. The heading for subpart A is removed.

3. Section 811.101 is revised to read as follows:

§ 811.101 Purpose and scope.

(a) The purpose of this part is to provide a basis for determining tax exemption of obligations issued by public housing agencies pursuant to Section 11(b) of the United States Housing Act of 1937 (42 U.S.C. 1437i) to refund bonds for Section 8 new construction or substantial rehabilitation projects.

(b) This part does not apply to tax exemption pursuant to Section 11(b) for low-income housing projects developed pursuant to 24 CFR parts 950 and 941.

4. Section 811.102 is amended by:

a. Removing the paragraph designations;

b. Removing the definitions of ''*Capitalized Interest During Construction*'' and ''*Development Cost*''; and

c. Revising the definition of ''*Obligations*'' to read as follows:

§ 811.102 Definitions.

* * * * *

Obligations. Bonds or other evidence of indebtedness that are issued to provide permanent financing of a low-income housing project. Pursuant to Section 319(b) of the Housing and Community Development Act of 1974, the term obligation shall not include any obligation secured by a mortgage insured under Section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l) and issued by a public agency as mortgagor in connection with the financing of a project assisted under Section 8 of the Act. This exclusion does not apply to a public agency as mortgagee.

* * * * *

5. Section 811.105 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 811.105 Approval of agency or instrumentality PHA.

* * * * *

(b) The charter or other organic document establishing the applicant shall limit the activities to be performed by the applicant, and funds and assets connected therewith, to carrying out or assisting in carrying out Section 8 projects and other low-income housing projects approved by the Secretary. * * *

* * * * *

§ 811.106 [Amended]

6. Section 811.106 is amended by revising the section heading; by removing paragraphs (a), (b), and (c); and by removing the paragraph designation to paragraph (d), to read as follows:

§ 811.106 Default under the contract.

* * * * *

7. Section 811.107 is revised to read as follows:

§ 811.107 Financing documents and data.

(a) The financing agency shall assure that any official statement or prospectus or other disclosure statement prepared in connection with the financing shall state on the first page that:

(1) In addition to any security cited in the statement, the bonds may be secured by a pledge of an Annual Contributions Contract and a Housing Assistance Payments Contract, executed by HUD;

(2) The faith of the United States is solemnly pledged to the payment of annual contributions pursuant to the Annual Contributions Contact or to the payment of housing assistance payments pursuant to the Housing Assistance Payments Contract, and funds have been obligated by HUD for such payments;

(3) Except as provided in any contract of mortgage insurance, the bonds are not insured by HUD;

(4) The bonds are not to be construed as a debt or indebtedness of HUD or the United States, and payment of the bonds is not guaranteed by the United States;

(5) Nothing in the text of a disclosure statement is to be interpreted to conflict with the above; and

(6) HUD has not reviewed or approved and bears no responsibility for the content of disclosure statements.

(b) The financing agency shall retain in its files the documentation relating to the financing. A copy of this documentation shall be furnished to HUD upon request.

8. Section 811.108 is revised to read as follows:

§ 811.108 Debt service reserve.

(a) *FHA-Insured projects.* (1) The debt service reserve shall be invested and the income used to pay principal and interest on that portion of the obligations which is attributable to the funding of the debt service reserve. Any excess investment income shall be added to the debt service reserve. In the event such investment income is insufficient, surplus cash or residual receipts, to the extent approved by the field office, may be used to pay such principal and interest costs.

(2) The debt service reserve and its investment income shall be available only for the purpose of paying principal or interest on the obligations. The use of the debt service reserve for this purpose shall not be a cure for any failure by the owner to make required payments.

(3) Upon full payment of the principal and interest on the obligations (including that portion of the obligations attributable to the funding of the debt service reserve), any funds remaining in the debt service reserve shall be remitted to HUD.

(b) *Non-FHA-insured projects.* (1) Investment income from the debt service reserve, up to the amount required for debt service on the bonds attributable to the debt service reserve, shall be credited toward the owner's debt service payment. Any excess investment income shall be added to and become part of the debt service reserve.

(2) The debt service reserve and investment income thereon shall be available only for the purpose of paying principal or interest on the obligations. The use of the debt service reserve for this purpose shall not be a cure for any failure by the owner to make required payments.

(3) Upon full payment of the principal and interest on the obligations (including that portion of the obligations attributable to the funding of the debt service reserve), any funds remaining in the debt service reserve shall be remitted to HUD.

§§ 811.109 through 811.113 [Removed]

9. Sections 811.109 through 811.113 are removed.

§ 811.114 [Redesignated]

10. Section 811.114 is redesignated as § 811.109 and newly redesignated § 811.109 is amended by removing paragraphs (a) through (c), and by removing the paragraph designation to paragraph (d).

§§ 811.115 through 811.118 [Removed]

11. Sections 811.115 through 811.118 are removed.

12. Section 811.110 is added to read as follows:

§ 811.110 Refunding of obligations issued to finance Section 8 projects.

(a) This section states the terms and conditions under which HUD will approve refunding or defeasance of certain outstanding debt obligations which financed new construction or substantial rehabilitation of Section 8 projects, including fully and partially assisted projects.

(b) In the case of bonds issued by State Agencies qualified under 24 CFR part 883 to refund bonds which financed projects assisted pursuant to 24 CFR part 883, HUD requires compliance with the prohibition on duplicative fees contained in 24 CFR part 883 and with paragraphs (f) and (h) of this section, as applicable to the projects to be refunded.

(c) No agency shall issue obligations to refund outstanding 11(b) obligations until the Office of the Assistant Secretary for Housing sends the financing agency a Notification of Tax Exemption based on approval of the proposed refunding's terms and conditions as conforming to this part's requirements, including continued operation of the project as housing for low-income families, and where possible, reduction of Section 8 assistance payments through lower contract rents or an equivalent cash rebate to the U.S. Treasury (i.e. Trustee Sweep). The agency shall submit such documentation as HUD determines is necessary for review and approval of the refunding transaction. Upon conclusion

of the closing of refunding bonds, written confirmation must be sent to the Office of Multifamily Housing by bond counsel, or other acceptable closing participant, including a schedule of the specific amount of savings in Section 8 assistance where applicable, CUSIP number information, and a final statement of Sources and Uses.

(d) (1) HUD approval of the terms and conditions of a Section 8 refunding proposal requires evaluation by HUD's Office of Multifamily Housing of the reasonableness of the terms of the Agency's proposed financing plan, including projected reductions in project debt service where warranted by market conditions and bond yields. This evaluation shall determine that the proposed amount of refunding obligations is the amount needed to: pay off outstanding bonds; fund a debt service reserve to the extent required by credit enhancers or bond rating agencies, or bond underwriters in the case of unrated refunding bonds; pay credit enhancement fees acceptable to HUD; and pay transaction costs as approved by HUD according to a sliding scale ceiling based on par amount of refunding bond principal. Exceptions may be approved by HUD, if consistent with applicable statutes, in the event that an additional issue amount is required for project purposes.

(2) The stated maturity of the refunding bonds may not exceed by more than one year the remaining term of the project mortgage, or in the case of an uninsured loan, the later of expiration date of the Housing Assistance Payments Contract (the ''HAPC'') or final maturity of the refunded bonds.

(3) The bond yield may not exceed by more than 75 basis points the 20 Bond General Obligation Index published by the Daily Bond Buyer for the week immediately preceding the sale of the bonds, except as otherwise approved by HUD. An amount not to exceed one-fourth of one percent annually of the bonds' outstanding principal balance may be allowed for servicing and trustee fees.

(e) For projects for which the Agreement to enter into the HAPC was executed between January 1, 1979, and December 31, 1984 (otherwise known as ''McKinney Act Projects''), for which a State or local agency initiates a refunding, the Secretary shall make available to an eligible issuing agency 50 percent of the Section 8 savings of a refunding, as determined by HUD on a project-by-project basis, to be used by the agency in accordance with the terms of a Refunding Agreement executed by the Agency and HUD which incorporates the Agency's Housing Plan for use of savings to provide decent, safe, and sanitary housing for very low-income households. In determining the amount of savings recaptured on a project-by-project basis, as authorized by section 1012(b) of the McKinney Act, HUD will take into account the physical condition of the projects participating in the refunding which generate the McKinney Act savings and, if necessary, HUD will finance in refunding bond debt service correction of existing deficiencies which cannot be funded completely by existing project replacement reserves or by a portion of reserves released from the refunded bond's indenture. For McKinney Act refundings of projects which did not receive a Financing Adjustment Factor (''FAF''), HUD will allow up to 50 percent of debt service savings to be allocated to the project account; in which case, the remainder will be shared equally by the Agency and the U.S. Treasury.

(f) For refundings of Section 8 projects other than McKinney Act Projects, and for all transactions which substitute collateral for, but do not redeem, outstanding obligations, and for which a HUD approval is needed (such as assignment of a HAPC or insured mortgage note), the Office of Multifamily Housing in consultation with HUD Field Office Counsel will review the HAPC, the Trust Indenture for the outstanding obligations, applicable HUD regulations, and reasonableness of proposed financing terms. In particular, HUD review should be obtained for the release of reserves from the trust indenture of the outstanding 11(b) bonds that are being refunded, defeased, or pre-paid. A proposal to distribute to a non-Federal entity the benefits of a refinancing, such as debt service savings and/or balances in reserves held under the original Trust Indenture, should be referred to the Office of Multifamily Housing for further review. In proposals submitted for HUD approval, HUD will consent to release reserves, as provided by the Trust Indenture, in an amount remaining after correction of project physical deficiencies and/or replenishment of replacement reserves, where needed. In the case of a refunding of 11(b) bonds by a public agency issuer which is the owner of the project and is entitled to reserves held under the Trust Indenture, HUD requires execution by the project owner of a use agreement, and amendment of a regulatory agreement, if applicable, to extend low-income tenant occupancy for ten years after expiration of the original HAPC term. In the case of HAP contracts with renewable 5-year terms, the Use Agreement shall extend for 10 years after the project owners first opt-out date. The Use Agreement may also be required of private entity owners, unless the refunding is incidental to a transfer of project ownership or a transaction which provides a substantial public benefit, as determined by the Office of Multifamily Housing. Proposed use of benefits shall be consistent with applicable appropriations law, the HAPC, and other requirements applicable to the original project financing, and the proposed financing terms must be reasonable in relation to bond market yields and transaction fees, as approved by the HUD Office of Multifamily Housing.

(g) Agencies shall have wide latitude in the design of specific delivery vehicles for use of McKinney Act savings, subject to HUD audit of each Agency's performance in serving the targeted income eligible population. Savings may be used for shelter costs of providing housing, rental, or owner-occupied, to very low-income households through new construction, rehabilitation, repairs, and acquisition with or without rehab, including assistance to very low-income units in mixed-income developments. These include programs designed to assist in obtaining shelter, such as rent or homeownership subsidies. Self-sufficiency services in support of very low-income housing are also eligible, and may include, but are not limited to, homeownership counseling, additional security measures in high-crime areas, construction job training for residents' repair of housing units occupied by very low-income families, and empowerment activities designed to support formation and growth of resident entities. Except for the cost of providing third-party program audit reports to HUD, eligible costs exclude consultant fees or reimbursement of Agency staff expenses, but may include fees for professional services required in the Agency's McKinney Act programs of assistance to very low-income families. Unless otherwise specified by HUD in a McKinney Agreement, savings shall be subject to the above use requirements for 10 years from the date of receipt of the savings.

(h) Refunding bonds, including interest thereon, approved under this Section shall be exempt from all taxation now or hereafter imposed by the United States, and the notification of approval of tax exemption shall not be subject to revocation by HUD. Whether refunding bonds approved under this section meet the requirements of

Section 103 or any other provisions of the Internal Revenue Code is not within the responsibilities of HUD to determine. Such bonds shall be prepaid during the HAPC term only under such conditions as HUD shall require.

Dated: March 27, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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CFR CHECKLIST

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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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3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	[1] Jan. 1, 1995
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37	(869–026–00139–1)	20.00	July 1, 1995
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
1–51	(869–026–00143–0)	40.00	July 1, 1995
52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61–71	(869–026–00147–2)	36.00	July 1, 1995
72–85	(869–026–00148–1)	41.00	July 1, 1995
86	(869–026–00149–9)	40.00	July 1, 1995
87–149	(869–026–00150–2)	41.00	July 1, 1995
150–189	(869–026–00151–1)	25.00	July 1, 1995
190–259	(869–026–00152–9)	17.00	July 1, 1995
260–299	(869–026–00153–7)	40.00	July 1, 1995
300–399	(869–026–00154–5)	21.00	July 1, 1995
400–424	(869–026–00155–3)	26.00	July 1, 1995
425–699	(869–026–00156–1)	30.00	July 1, 1995
700–789	(869–026–00157–0)	25.00	July 1, 1995
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–026–00159–6)	9.50	July 1, 1995
101	(869–026–00160–0)	29.00	July 1, 1995
102–200	(869–026–00161–8)	15.00	July 1, 1995
201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–026–00163–4)	26.00	Oct. 1, 1995
400–429	(869–026–00164–2)	26.00	Oct. 1, 1995
430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
1–999	(869–026–00166–9)	23.00	Oct. 1, 1995
1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869–022–00170–7)	22.00	Oct. 1, 1995
200–499	(869–026–00171–5)	14.00	Oct. 1, 1995
500–1199	(869–026–00172–3)	23.00	Oct. 1, 1995
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
70–89	(869–026–00176–6)	8.50	Oct. 1, 1995
90–139	(869–026–00177–4)	15.00	Oct. 1, 1995
140–155	(869–026–00178–2)	12.00	Oct. 1, 1995
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
200–499	(869–026–00181–2)	19.00	Oct. 1, 1995
500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
70–79	(869–026–00186–3)	24.00	Oct. 1, 1995
80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869–022–00185–0)	36.00	Oct. 1, 1994
1 (Parts 52–99)	(869–022–00186–8)	23.00	Oct. 1, 1994
2 (Parts 201–251)	(869–026–00190–1)	17.00	Oct. 1, 1995
2 (Parts 252–299)	(869–026–00191–0)	13.00	Oct. 1, 1995
3–6	(869–026–00192–8)	23.00	Oct. 1, 1995
7–14	(869–026–00193–6)	28.00	Oct. 1, 1995
15–28	(869–026–00194–4)	31.00	Oct. 1, 1995
29–End	(869–026–00195–2)	19.00	Oct. 1, 1995
49 Parts:			
1–99	(869–026–00196–1)	25.00	Oct. 1, 1995
100–177	(869–022–00194–9)	30.00	Oct. 1, 1994
178–199	(869–026–00198–7)	22.00	Oct. 1, 1995
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–022–00197–3)	35.00	Oct. 1, 1994
1000–1199	(869–026–00201–1)	18.00	Oct. 1, 1995
1200–End	(869–026–00202–9)	15.00	Oct. 1, 1995
50 Parts:			
1–199	(869–026–00203–7)	26.00	Oct. 1, 1995
200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
600–End	(869–026–00205–3)	27.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–026–00053–1)	36.00	Jan. 1, 1995
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994
Complete set (one-time mailing)		223.00	1993

[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.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] 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.

CFR ISSUANCES 1996
January 1996 Editions and Projected April, 1996 Editions

This list sets out the CFR issuances for the January 1996 editions and projects the publication plans for the **April, 1996** quarter. A projected schedule that will include the **July, 1996** quarter will appear in the first **Federal Register** issue of July.

For pricing information on available 1995–1996 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1996:

Title

CFR Index

1–2 (Revised as of Feb. 1, 1996)

3 (Compilation)

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
0–26
27–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1199
1200–1499
1500–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
0–50
51–199
200–399 (Cover only)
400–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13 (Revised as of Mar. 1, 1996)

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–149
150–999
1000–End

Projected April 1, 1996 editions:

Title

17 Parts:
1–199
200–239
240–End

18 Parts:
1–149
150–279
280–399
400–End

19 Parts:
1–140
141–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799 (Cover only)
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199 (Revised May 1, 1996)
200–219 (Revised May 1, 1996)
220–499 (Revised May 1, 1996)
500–699 (Revised May 1, 1996)
700–899 (Revised May 1, 1996)
900–1699 (Revised May 1, 1996)
1700–End (Revised May 1, 1996)

25

26 Parts:
1 (§§ 1.0-1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.440)
1 (§§ 1.441–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599 (Cover only)
600–End

27 Parts:
1–199
200–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1996

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 1	April 16	May 1	May 16	May 31	July 1
April 2	April 17	May 2	May 17	June 3	July 1
April 3	April 18	May 3	May 20	June 3	July 2
April 4	April 19	May 6	May 20	June 3	July 3
April 5	April 22	May 6	May 20	June 4	July 5
April 8	April 23	May 8	May 23	June 7	July 8
April 9	April 24	May 9	May 24	June 10	July 8
April 10	April 25	May 10	May 28	June 10	July 9
April 11	April 26	May 13	May 28	June 10	July 10
April 12	April 29	May 13	May 28	June 11	July 11
April 15	April 30	May 15	May 30	June 14	July 15
April 16	May 1	May 16	May 31	June 17	July 15
April 17	May 2	May 17	June 3	June 17	July 16
April 18	May 3	May 20	June 3	June 17	July 17
April 19	May 6	May 20	June 3	June 18	July 18
April 22	May 7	May 22	June 6	June 21	July 22
April 23	May 8	May 23	June 7	June 24	July 22
April 24	May 9	May 24	June 10	June 24	July 23
April 25	May 10	May 28	June 10	June 24	July 24
April 26	May 13	May 28	June 10	June 25	July 25
April 29	May 14	May 29	June 13	June 28	July 29
April 30	May 15	May 30	June 14	July 1	July 29